SUPREME COURT OF THE UNITED STATES.

No. 211.

DECEMBER TERM, 1868.

HENRY CARPENTER, PLAINTIFF IN ERROR,

vs.

JAMES DEXTER, EXECUTOR OF JOHN B. JAMES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Stipulation to amend record.

Supreme Court of the United States.

Writ of error to the Circuit Court of the United States for the northern district of Illinois.

JAMES DEXTER, executor of the last will and testament of John B. James, *ads.* HENRY CARPENTER.

It is stipulated between the parties that the record in this case be amended in this, that the blank certificate (not signed) on the back of the deeds purporting to be made by William L. Davenport to Eliphalet Hawley, and from said Hawley to Thaddeus Munson, were read in Providence, on the trial of said case, without any objection thereto as evidence of said recording; no objection was made that said blank certificate was not signed by the clerk or recorder, and no exception was taken to the statement of the court that said deeds were recorded May 17th, 1819. The plaintiff claimed that he not only proved said deeds by said certificates of acknowledgments thereto attached, but that he proved said first deed by proof at common law by deposition thereto attached; the deeds were read in evidence, the defendants in the court before claiming that they were not proved;

the court overruled the objection, def't excepted, and said deeds were read in evidence.

This stipulation is to be taken as part of the record and as part of the bill of exceptions in this cause.

Feb'y 17, 1868.

A. GARRISON,
Att'y for Pl'ff in Error.
W. C. GOUDY,
Att'y for Def't in Error.

Filed 22 Feb., 1868.

Endorsed: No. 211. Henry Carpenter *vs.* James Dexter, executor of John B. James, deceased. Stipulation to amend the record.

SUPREME COURT OF THE UNITED STATES.

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Error to the Circuit Court for the Northern Dist. of Illinois

BRIEF FOR PLAINTIFF IN ERROR.

BY A. GARRISON.

BIRCH & BARNARD, Steam Printers, 194 Clark st.

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SUPREME COURT OF THE UNITED STATES.

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HENRY CARPENTER,
Plaintiff in Error.
vs.
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Defendant in Error.

Error to the Circuit Court for the Norther Dist. of Illinois

BRIEF FOR PLAINTIEF IN ERROR.

STATEMENT OF CASE.

IN July, 1860, HENRY CARPENTER, a farmer, then nearly sixty years of age, purchased the land in controversy here, hitherto vacant and unoccupied, which adjoined his homestead, for $1,200, its full and fair value. Prior to said purchase, as is usual, he caused the records of his county (Bureau county, where the land lies) to be searched by an attorney, and before paying his money received a legal opinion as the result of such search, that the title was good. Incapable of judging of titles himself, he had to rely on the opinion of his counsel. That being satisfactory, Carpenter obtained a warranty deed for the land, and immediately took possession, fenced and cultivated it. He paid the taxes for 1860, and all subsequent years, save one, and offered to pay for that year. His improvements were worth over $2,000. Carpenter continued to cultivate this land, in the confident belief that his title was perfect,

and without notice, actual or constructive, that any other person had claim thereto. His deed came from the heirs of Ephraim De Witt, by their attorney duly authorized, properly executed and acknowledged; and Ephraim De Witt took directly from the patentee, Wm. T. Davenport, Aug. 6, 1818, by a deed equally well authenticated; and this title standing alone is impregnable.

Carpenter was therefore not only a *bona fide* purchaser for value, but he purchased the only title from the patentee then on record, and the oldest title in date in existence; and the seven years statute of limitations of Illinois had far advanced when this suit was commenced by James Dexter, claiming a title from the patentee, subsequently to his conveyance to De Witt; which not having been heard of in the country where the land lies, and no claim to the land having been made under it for nearly fifty years, subjects it to the gravest suspicions, and should not be received or tolerated, unless by imperious necessity, after the severest test and closest scrutiny.

This title of the plaintiff in error begins with a deed of bargain and sale with full warranty, from the patentee to Ephraim De Witt, the oldest in date and first of record, properly acknowledged and bearing every evidence of genuineness, and there can be no doubt but the title passed to Ephraim De Witt by that deed, and from his heirs to the plaintiff in error by the deed of July 22, 1861; and these deeds went to the jury without objection, as indeed there could be none.

The deed to De Witt bears date Aug. 6, 1818, and was recorded in Bureau county Dec. 19, 1861, while the *pretended* deed to Hawley is dated Sept. 1, 1818, and the deed from Hawley to Munson Dec. 12, 1818, neither of which have ever been recorded or in any way brought to the no-

tice of the plaintiff in error. It is true that on the margin of the two last deeds is a certificate (without any proper venue), evidently not in the recorder's hand writing, and without any signature thereto; but this is no proof, and there is no other proof whatever that those deeds were ever recorded.

We claim that in this case the court is imperatively called upon to recognize the well established rule relating to ejectments, to wit, that the plaintiff in error being in possession under these circumstances, the defendant in error was bound to prove a perfect and complete title in himself before he could call upon the party in possession for the evidence of his title.

Marshall v. *Barr*, 35 Ill., 106.
Joy v. *Berdell*, 25 Ill., 537.
Ricard v. *Williams*, 7 Wheat., 59.
Pilkin v. *Yow*, 13 Ill., 251.
Covert v. *Irwin*, 3 Serg. & R., 64.
Colston v. *McKay* 1 Marsh (Ky.), 251.
Jackson v. *Paine*, 2 Cowen, 502.
Hamilton v. *Doolittle*, 37 Ill., 473.

I.

PLAINTIFF'S TITLE.

1. The deed of Davenport to Hawley, Sept. 1, 1818, is not proved; First, because it was not acknowledged. The pretended acknowledgement before H. Wendall, Jr., a justice of the peace is no proof of execution.

The laws of New York at that time, did not allow justices of the peace to take acknowledgement of deeds, notwithstanding J. K. Winne has given a printed certificate to that effect evidently though without consideration.

I Rev. Statutes, N. Y., (1828) p. 756, § 4.

McCormick, v. *Evans*, 33 Ill. 327.
Lyon v. *Kain*, 36 Ill. 362.

The authority to a justice of the peace in New York was first given in 1840 to take acknowledgements. Chap. 38, sec. 1, Act of 1840.

Second, The laws of Illinois did not then allow justices of the peace out of the State to take acknowledgments of deeds to be recorded in this State. This deed was made prior to Act of Illinois of 1819 relating to the execution of deeds out of this State, and is governed by the Territorial Act of 1807.

Purple's Real Estate Statutes 459, 462, (Act Sept. 17; 1807, § 13).
Adams v. *Bishop*, 19 Ill. 395.
Buckmaster v. *Job*, 15 Ill. 328.
Semple v. Miles, 2 Scam. 315.

It was not acknowledged in conformity to the laws of either State. It was a *nullity*, utterly void as proof.

Third, The acknowledgement in form is defective because it does not state that the grantor was personally known to the officer, which was required by the laws of New York and Illinois then in force, and is an indispensible condition.

1 Revised Statutes New York (1828) 758, § 9 and 12.
Or 1 Rev. Laws, 369, § 1 & 2.
Montay v. *Linn*, 19 Ill. 399.
Tuly v. *Davis*, 30 Ill. 103.
Wiley v. *Bean*, 1 Gil. 303.

Fourth, And this last defect is not aided by the affidavit of Wooster (made the next day after the date of the deed which is a very suspicious circumstance) because,

that has no assignable locality; the venue being simply "State of New York, ss." which is fatally defective.

2 Rev. Statutes N. Y. (1828) p. 282 § 12.
Vance v. *Schuyler*, 1 Gil. 160.
Montag v. *Linn*, 19 Ill. 399.

Nor does the subscribing witness state that he became such at the request of the grantor, or signed the same at the time of the execution, as required in that State.

2 Scates' Comp. (Laws Ill.) 964.
Hallenback v. *Flemming*, 6 Hill 306.
1 Greenleaf Ev. sec. 569.

Nor does the officer certify that said William D. Wooster was known to him to be a subscribing witness, nor was there any proof of that fact.

2 Scates' Comp. (Laws Ill.) 964.
Montag v. *Linn*, 19 Ill. 399, 401.
Job v. *Tebbetts*, 4 Gil. 143.
Tully v. *Davis*, 30 Ill. 103.

This proof by the subscribing witness is not in conformity to the laws of New York at that time nor to the laws of Illinois.

1 Rev. Statutes (N. Y.) 758 § 12.
Purple's Real Estate Statutes (Ill.) 457 § 2.

The affidavit of W. T. Davenport endorsed thereon is a nullity, not having been sworn to and having no jurat attached.

Fifth, This deed was not proved at common law. The deposition of Van Ranslaer attached thereto, simply testifies to the genuineness of the signature of one of the subscribing witnesses. There is no evidence of the death or absence of the other subscribing witness (Wooster) nor any proof whatever of the signature or identity of the grantor. These were indispensable.

Kelsey v. *Hammond*, 18 Conn. R. 31.
Wiley v. *Bean*, 1 Gil. 302.
McConnell v. *Reed*, 2 Scam. 374.
Hallenback v *Fleming*, 6 Hill, 306.
Duondy v. *Chambers*, 23 Ill. 369.
Cunliff v. *Sefton*, 2 East. 182.

Nor is this deed proved by the deposition of Van Ranslaer under the law of Illinois, 1845 (Scates' Comp. laws Ill. p. 964 § 41), because that act requires the hand writing of the grantor and at least one of the subscribing witnesses to be proved by "two or more disinterested persons swearing to each signature," and we contend that this act which is still in force provides the only mode by which deeds defectively acknowledged can be proved on the trial, and is really, we think, the controlling rule of evidence where the deeds are attempted to be proved by witness on the trial.

This deed cannot be treated as an ancient deed. No possession or claim to the land was made thereunder until the commencement of this suit.

An ancient deed must be accompanied by possession or what is equivalent.

1 Greenleaf Ev., § 144, and note 1.

The laws of Illinois since the date of the deed, retrospective as they may be claimed to be, do not aid this deed nor make the certificates thereon of any avail because they relate *only to recorded deeds.* And this deed has never been recorded. It is only to recorded deeds that those acts were intended to apply or effect.

The signature of the recorder is absolutely essential to prove the recording of a deed. A certificate without any signature is fatally defective and no proof whatever.

The defective acknowledgement of this deed was at-

tempted to be obviated by the deposition of Van Ranslaer, but the law of this State requires the oath of two witnesses swearing to each signature.

2 Scates' Comp. 964, sec. 41.

And we make this point to all the certificates of like character, that the certificate of the clerk is not conclusive that the deed is or was acknowledged in conformity to the laws of the State when it was so made, but the law can be shown of such State to contradict such certificate and show the laws on that subject.

Lyon v. *Kain*, 36 Ill., 363.
Adams v. *Bishop*, 19 Ill., 398.

2. The deed from Hawley to Munson dated Dec. 12, 1818, is not proved, because, First, to the certificate there is no assignable locality, "State of New York, ss.," is not sufficient.

2 Rev. Statutes N. Y. (1828) p. 282, § 38 § 40.
Montag v. *Linn*, 19 Ill. 399.
Vance v. *Schuyler*, 1 Gil. 160.

Commissioners of Deeds in New York had no jurisdiction to take acknowledgements beyond the county in which they resided.

Adams v. *Bishop*, 19 Ill. 395.
2 Rev. Statutes New York (1828) p. 282.
1 Rev. Statutes N. Y. (1818) p. 756 § 4.
See also Dep. of J. S. Van Ranslaer.

Nor does this certificate identify the person described in the deed, as the same person who executed the same, must be certified or proved.

Lyon v. *Kain*, 36 Ill., 369.

Second. The laws of Illinois at that time did not au-

thorize commissioners to take acknowledgements of deeds to be recorded in this State.

Purple's Real Estate Statutes, 462.

Nor is this deed proved at common law by Van Ranslaer's deposition who was not a subscribing witness thereto and who does not swear to the signature of the grantor or the signature of the subscribing witnesses.

The remarks made above concerning the deed from Davenport to Hawley not being recorded, apply equally to this deed of Hawley to Munson and we further observe, that the two deeds being on the same paper, would require a certificate to each deed of the time and place of recording.

3. The deed from Thadeus Munson to William James, of February 13, 1819, is not proved, because—

First. The certificate of acknowledgement has no assignable locality. "State of New York—ss.," is not sufficient. Estes Howe could not act out of the County of Albany.

1 Rev. Statutes N. Y. 756, Sec. 4, (ed 1828.)
2 Rev. Statutes N. Y. (1828,) p. 282, Sec. 38 and 40.
2 Rev. Laws N. Y. p. 149, Sec. 16.
Montag v. *Linn*, 19 Ill. 399.
Vance v. *Schuyler*, 1 Gil. 160.

Second. Nor was he authorized to take acknowledgments by the laws of Illinois. This was before the Act of Illinois of 1819, and was governed by the Territorial Act of September 17, 1807, Sec. 14, which provides that "All "deeds and conveyances by any persons not residing "within this Territory, and brought here to be executed "in the County where the lands lie, the acknowledgment

" thereof being taken and made in the manner hereinbe-
" fore directed, before any Mayor or Chief Magistrate or
" officer of the cities, towns or places where such deeds or
" conveyances are or shall be made or executed, and cer-
" tified under the common or public seal of such cities,
" towns or places, shall be valid, and as effectual in law
" as if the same had been made and acknowledged in
" manner aforesaid before any Judge of the General Court
" of this Territory, or before any Judge of the Court of
" Common Pleas, or Justice of the Peace for the County
" where the land lies, anything herein contained to the
" contrary notwithstanding."

Section eight of the same Act relates to acknowledgments within the Territory, and names the above officers.

Hence we say, that, under this Act, Estes Howe, as Judge of the Common Pleas of Albany, had no power to take acknowledgments of *deeds* for the State of Illinois, he not being Mayor or Chief Magistrate of a city or town, and not using the seal of any city, town or place.

Third. There is no proof that this deed was acknowledged according to the laws of New York. There is no certificate of conformity.

Nor has there ever been recorded a certificate that the same was made before a proper officer, or in conformity to the laws of New York.

It is a well settled rule in this State, that deeds must be acknowledged or proved wholly in conformity to the laws of this State, or in entire conformity to the laws of the State where executed. The laws of the different States cannot be invoked at the same time to aid the defect.

Lyon v. *Kain*, 36 Ill., 363.
Montay v. *Linn*, 19 Ill. 401.
Adams v. *Bishop*, 19 Ill. 395.

The foregoing defects in the title of the defendant in error are so palpable and fatal, that that title ought not to be tolerated by any Court or jury; and even had it been proved, it was defeated by the title of De Witt, through which the plaintiff in error claims, first in date and first of record. Accordingly, the Court erred in stating to the jury that the deeds from Davenport to Hawley and Hawley to Munson, were recorded May 17, 1819, and before the deed to De Witt. The Court should have left it to the jury to say which deeds were recorded first; and if they found that the De Witt title was first recorded, they should have been instructed to find for the defendant below.

4. The defendant in error sought to connect himself with the title of William James, by showing a decree of the Circuit Court of Pike county, Illinois, *in a chancery proceeding* for the partition of certain lands; by the terms of which, this land was alloted to John B. James, of whom defendant in error is the executor.

The court allowed this decree to go to the jury against the objections of the plaintiff in error, which went to the jurisdiction of the court, as follows:

First. The Circuit Court of Pike county, Illinois, had no jurisdiction to make the decree of partition as against the infant heirs of William James *without full proof;* nor to take the bill "pro-confesso," as against such infant heirs.

Proof must be made in full; against infants nothing can be taken pro-confesso. No proof was made, and this goes to the jurisdiction.

Clafflin v. *Heire*, 18 Ill., 36, 38.
Enos v. *Capps*, 12 Ill., 255.
McClay v. *Norris*, 4 Gil., 370.
Hough v. *Doyle*, 8 Blackford, 300.
Chaffin v. *Heirs of Kimball*, 23 Ill., 37.

Second. A mere chancery decree of partition of the Pike County Circuit Court (and this was such) without the execution of deeds in pursuance thereof, and recorded where the land lies, could not effect lands beyond the county, nor does it change the legal title in the county (and this land is in a different county), and should have been rejected as evidence.

Aldridge v. *Giles*, 3 Henry & Mumford, 136.
Chickering v. *Failes*, 29 Ill., 304.

The defendant in error having declared for the whole estate in fee simple, and not having devested the heirs of William James, who were infants at the time of said partition, cannot recover.

Murphy v. *Orr*, 32 Ill., 489.

It is distinctly decided in *Chickering* v. *Failes*, 29 Ill., 304, "That whilst this is a proceeding in equity, a good "and sufficient partition, which a court of equity will rec- "ognize and enforce between the parties to the bill, it is "not such a partition as vested in the parties a legal title "to the shares assigned to each of them, for want of mu- "tual releases.

"It is settled doctrine of the courts, that to vest the "title in the parties to the shares allotted to each, they "must execute releases for the portions not assigned to "them."

There were no deeds of this kind proved, or introduced in evidence.

But another insuperable objection to this partition proceeding is, that Wm. James made a will vesting all his real estate in three executors named, who alone had power to convey. This will was proved by the plaintiff in error, and fully explains the reason why in the said record of partition in Pike county the petition does not appear (which of course had to allege that William James died intestate,

and which petition is understood long since to have disappeared from the files), and adds another strong suspicion to the pretended claim of William James, and the fairness and validity of those proceedings.

And this will shows a legal devise of all the lands of which William James died seized in the State of Illinois, to his three above executors named Gideon Hawley, James King, and Augustus James; and therein he says he appoints them "my said trustees." See will; or *Hawley* v. *James*, 16 Wend., 71, 74 and 281, wherein all the title that William James had to any land in Illinois is confirmed in them. If it had been averse, we submit it would not have divested their title to the land in Illinois. Their title to the land here must be governed by our laws.

See— *Hawley* v. *James* 7 Paige, 218–220.

An express decision in this very case, of the land of William James in Illinois; and the Chancellor holds, that the title is in the trustees by the laws of Illinois, and that the children of William James have only an equitable interest.

Again, by the laws of Illinois, partition can only be made between those who have title by "purchase, devise, or descent," and their title must be shown.

See— 1 Purple Statutes, 793; or
R. S. of Ill., 1845, 394, chap. 79.

This is clear, showing that the defendant in error, as executor of John B. James, had no legal title to maintain ejectment. And if William James ever had title, it is still clear, so far as the proof shows, that the same is in his named trustees.

And the Pike county record recognizes incidentally the existence of this state of facts, so far as one of the persons are concerned, and it in no way or manner divests these trustees of said title.

Therefore we say, that the plaintiff below, not having shown a perfect title in himself, could not recover, and the verdict should have been for Carpenter, being in possession under title. The title of the defendant in error is open to the gravest suspicions, and full of palpable defects, and ought not to prevail.

DEFENDANT'S TITLE.

II.

But Carpenter was in possession under paramount title from the patentee, every link of whose chain is perfect and free from suspicion. He relies, of course, on the deed from W. T. Davenport, the patentee, to Ephriam De Witt, and from the heirs of Ephriam De Witt, by J. B. Strong, their attorney, to himself. That Ephriam De Witt was dead, and that his heirs are correctly named in the power of attorney by them, was admitted to be true on the trial.

III.

Again, Eliphalet Hawley, the pretended grantee of the patentee (in the title of the defendant in error) was at the time he took his pretended deed, a purchaser with actual notice of De Witt's title, he being a subscribing witness to the deed from William T. Davenport to Ephraim De Witt, a fact fully proved and which the jury should have found, and would have so found had they been properly instructed by the court.

The deed from Davenport to Hawley did not by its terms amount to a warranty deed, and only passed such title as the grantor had at the time.

A. GARRISON,
For Pl'ff in Error.

IN THE

Supreme Court of the United States,

December Term, A. D. 1868.

HENRY CARPENTER,

—vs.—

JAMES DEXTER, Executor of JOHN B. JAMES, deceased.

In Error to Circuit Court, Northern District of Illinois.

POINTS, AUTHORITIES AND ARGUMENT, FOR DEFENDANT.

W. C. GOUDY, *for Defendant in Error.*

Beach & Barnard, Steam Print, 122 & 124 S. Clark St.

IN THE

Supreme Court of the United States,

December Term, A. D. 1868.

HENRY CARPENTER, —vs.— JAMES DEXTER, Executor of JOHN B. JAMES, deceased.	In Error to Circuit Court, Northern District of Illinois.

Points, Authorities and Argument, for Defendant.

May it please your Honors :

On the 29th day of August, 1864, James Dexter, Executor of John B. James, deceased, the defendant in error, commenced an action of ejectment against Henry Carpenter, the plaintiff in error, in the Circuit Court for the Northern District of Illinois, to recover the possession of the north east quarter of section number twenty-five in

township fifteen north of range six east of the 4th principal meridian, a tract of land in Bureau County, Illinois. The defendant plead the general issue.

There were four trials, all of which resulted in favor of the plaintiff below. From the last judgment the defendant below prosecuted a writ of error to this court.

Upon the trial the plaintiff below read in evidence a Patent from the United States to William T. Davenport, dated May 27, 1818; a deed from Davenport to Eliphalet Hawley, dated Sept. 1, 1818, and recorded May 17, 1819; a deed from Hawley to Thadeus Munson, dated Dec. 12, 1818, and recorded May 17, 1819; and a deed from Munson to William James, dated Feb. 13, 1819, and recorded May 17, 1819, all conveying the premises described in the declaration. He also proved the death of William James Dec. 19, 1832, leaving certain children and grand children as his heirs at law, one of whom was John B. James. The plaintiff below then read in evidence an exemplification of a proceeding in the Circuit Court of Pike County, Illinois, wherein John B. James and another were complainants, and the other heirs of William James were defendants, commenced in 1843, whereby the land described in the declaration was alloted to John B. James in severalty as sole owner thereof, in the year 1844. He further proved that John B. James died testate May 22, 1856, and read in evidence his will properly probated, by which he devised all his estate real and personal to James Dexter, the plaintiff below.

The defendant below read in evidence a certified copy of the same original patent produced by the plaintiff: a

copy of a deed purporting to be made by William T. Davenport to Eph. DeWitt, dated Aug. 6, 1818, and recorded Dec. 19, 1861; a copy of a deed purporting to be from William James to Levi Bebee, dated Oct. 13, 1819, recorded in Warren County Sept. 30, 1862; a deed purporting to be from Levi Bebee to Ephraim DeWitt, dated Nov. 1, 1822, and recorded Jan. 17, 1862. He also proved the death of Ephraim DeWitt before 1845, leaving certain children heirs at law, and read powers of attorney by such heirs to John B. Strong, and a deed from these heirs by the attorney in fact to Henry Carpenter, the defendant below, dated July 22, 1861.

The plaintiff below to rebut the proof presented by the defendant, read in evidence a copy of a record from the Circuit Court of Warren County, Illinois, which shows a bill in chancery filed by the plaintiff, James Dexter, executor of John B. James and others against Henry Carpenter, the defendant, and others, Jan. 19, 1862, alleging that the deeds produced in evidence by the defendant, purporting to be made by William James to Levi Bebee and from Levi Bebee to Ephraim De Witt were fabricated and forged, and praying that they be set aside; it further shows personal service of a summons on Henry Carpenter, Feb. 24, 1865, and a final decree rendered Oct. 24, 1866, declaring said deeds to be forged and null and void, and restraining Carpenter from setting up any claim under them.

Upon the trial the defendant below offered to read a copy of the will of William James, to which objection was made because it was not properly authenticated, and the question was reserved, and the copy was read in evidence

subject to the objection, but the question was not further considered, because the Court was of the opinion that the will was not material as to property in Illinois, and no exception was taken. Upon the trial Carpenter himself testified as a witness, but I do not perceive that his evidence is material, and no exception was taken in regard thereto.

EXCEPTIONS.

Upon the trial certain exceptions to decisions of the Court were taken by the plaintiff in error and are preserved in the record, for review by this Court.

I present them in the order taken.

I.

DEED FROM DAVENPORT TO HAWLEY.

Objection was made to the deed from Davenport to Hawley on the ground that it had not been proved.

Printed Record, 12, 19.

The objection was properly overruled.

1. The deed was acknowledged before a Justice of the Peace in Albany County, N. Y., Sept. 1, 1818. At that time a Justice of the Peace was not authorized by the laws

of New York to take the acknowledgment of deeds, and such officer was not allowed by the laws of Illinois, to take the proof of deeds out of the State. For these reasons it is admitted that the proof of the execution of the deed before the Justice was insufficient at the time it was taken. Yet this acknowlegement was made good by a statute of Illinois passed in 1847.

In form the certificate conforms to the law in force in Illinois at the time it was made. The statute governing the case was passed in 1807 by the Territorial Legislature of Indiana.

Purple's Real Estate Statutes, 460.

The law of 1819 by the first State legislature of Illinois is a copy of the statute of 1807, changing the word territory to State. *Ibid*, 462.

The statute of 1819 did not require the officer to certify to the identity of the person acknowledging the deed.

Ayers v. *McConnell* 2 *Scam*, 308.

Such a provision was first adopted in 1827.

Purples's Real Estate Stat. 476.

The certificate to the deed from Davenport to Hawley was, therefore, in accordance with the laws of Illinois, except that it was not made by an officer authorized by the statutes at that time.

The legislature of Illinois, in 1847, passed a statute that all deeds of land lying within the State should be acknowleged before certain officers named, and that "such proof and acknowledgment may also be made before any jus-

tice of the peace, but if such justice of the peace reside out of this State, there shall be added to the deed a certificate of the proper clerk, setting forth that the person, before whom the proof or acknowledgment was made, was a justice of the peace, at the time of making the same;" and then declares that "all deeds and conveyances, *which have been*, or may be, acknowledged or proved in the manner prescribed by this section, shall be entitled to record, and be deemed as good and valid in law, in every respect, as if the same had been acknowledged or proved in the same manner prescribed, &c."

Laws 1847, 37.

As the deed had been proved before an officer mentioned in this section, and in the form required by the law in force in 1818, it was after the passage of the act of 1847 entitled to record, and to be read in evidence.

The certificate of the proper clerk that the person making the certificate was a justice of the peace at the time was procured and bears date April 27, 1866.

2. On the 2d day of September, 1818, a second certificate of acknowledgment was made by a commissioner of deeds for the city of Albany, N. Y.

Printed Record, 15.

By this certificate it appears that one of the subscribing witnesses to the deed, to the commissioner known, came before him, and swore that he saw the grantor execute and acknowledge the deed and knew him to be the same person described in, and who acknowledged to have executed the same.

This proof of the deed was in conformity with the law of New York.

1 *Rev. Law, N. Y.* 1813, p. 369.

Being according to the law of a sister State the statute of Illinois declared that it was duly proved, entitled to record, and to be read in evidence.

Purple's Real Estate Statutes, 465.
Laws 1847, 37.

3. The deposition of a witness was taken who proved the hand writing of H. Wendell, Jun'r. one of the subscribing witnesses to the deed, and that such witness was dead.

Printed Record, 17.

It appears that the deed was executed at Albany, New York, from which fact the presumption is that both of the subscribing witnesses resided at that place, and were beyond the jurisdiction of the Court.

The execution of the deed was, therefore, proved according to the rules of evidence at common law.

The counsel for the plaintiff in error, however, claims that the legislature of Illinois has prescribed a rule by section 41, chap. 24, entitled conveyances, (Rev. Laws 1845, 110), changing the rules of evidence at common law, in regard to the proof of a deed. The Supreme Court of Illinois has expressly decided otherwise, and that section 41 relates to proof before a ministerial officer, not to evidence in a court.

Newsom v. *Luster*, 13 Ill., 185.

The deed is not only sufficiently proved, but is properly

authenticated in these three different modes, either of which was enough to admit it in evidence.

II.

Deed from Hawley to Munson.

This deed was properly proved, as appears from the certificate of H. Wendell, junior, a commissioner of deeds in New York.

Printed Record, 16.

The acknowledgment was in conformity with the laws af New York.

1 *Rev. Laws* 1813, N. Y, 369.

And being so, it was legally proved according to the statute of Illinois.

Purple's Real Estate Statutes, 465.
Laws 1847, 37.

An objection is made to this certificate, and to one of the certificates to the former deed, and to the next deed from Munson to James, because the only venue to it is "State of New York, ss."

The counsel for plaintiff in error refers to *Vance* v. *Schuyler*, 1 Gilm., 163, as authority that such a certificate has no assignable locality. In that case the Supreme Court held a certificate bad, because the only means of determining where it was acknowledged was the venue. "Lincoln ss. Wiscassett."

It will be observed at once that the State of New York

is a definite place, while "Lincoln ss. Wiscassett" does not certainly show any state, county or town.

This deed differs from the one rejected in *Vance* v. *Schuyler* in other respects.

First. It has a certificate attached that H. Wendell, junior, was a commissioner of deeds in and for the city of Albany, in the county of Albany, State of New York, dwelling in said city, authorized to take the acknowledgment, and that the deed was executed and acknowledged according to the laws of New York.

Second. The grantee is described as being of the city of Albany, and the deed is written on the back of the deed from Davenport to Hawley, the grantor, which was executed at Albany, in the county of Albany, in the State of New York, and describes Hawley as being of the same place.

The Supreme Court of Illinois, in a recent case, where the certificate and venue were exactly the same as that in *Vance* v. *Schuyler*, sustained the deed, upon the ground that the grantor and grantee were described in the body of the deed as being "of the State of Massachusetts," and there was a certificate that the officer was a notary public in Lincoln county, Massachusetts. These facts were held to be sufficient to show the deed was acknowledged in that county and state.

Harding v. *Curtis*, 48 Ill.

It may be true, as claimed by the counsel for the plaintiff in error, that a commissioner of deeds in New York could not take an acknowledgment out of his county, yet

the statute did not require that he should aver that he did act within his county. The presumption of law always is, that a public officer performs his official duty at the place appointed by law.

It is well settled that the court will examine the whole instrument to ascertain the place where it was acknowledged, and for this purpose it will be presumed that it was acknowledged where the parties or officer resided.

Bradford v. *Dawson*, 2 Ala., 203.
Brooks v. *Chaplin*, 3 Vt., 282.
Fuhrman v. *Land*, 13 S. & R., 383.
Beckel v. *Pettigrew et al*, 6 Ohio, 247.
Truluck v. *People*, 1 Kelley, 3.
Chandler v. *Spear*, 22 Vt., 388.

I quote from the case of *Brooks* v. *Chaplin*, 3 Vt., 282:

"It appeared by inspection of the deed, that the grantor described himself as a resident of Suffield, in the county of Hartford and State of Connecticut. The acknowledgment was taken two days after the date of the deed, and commenced as follows: "Hartford County, ss., April 24th, 1797." Then personally appeared," &c.

Per Curiam. "It is not indispensable that the place of taking should fully appear from the acknowledgment itself, provided it can be discovered with sufficient certainty from the whole instrument. And if we can infer, beyond any reasonable doubt, that the acknowledgment endorsed upon this deed was taken in the county of Hartford and State of Connecticut, it is to be regarded as a legal acknowledgment. We deem it a fair presumption in the

absence of all evidence to the contrary, that the deed was executed at the time it bears date, and at the place of the grantor's residence. And finding the acknowledgment so soon afterwards in the county of Harlford, we can intend no other than the same county of Hartford in which the deed is supposed to have been executed."

IV.

Deed from Munson to James.

The objection to the venue "State of New York, ss.," to the certificate of acknowledgment to this deed has already been discussed.

In this deed both of the parties are described as being of the city and county of Albany, in the State of New York, and the officer signs the certificate as judge of the Albany Common Pleas, &c.

The deed was acknowledged according to the laws of New York.

1 *Rev. Laws N. Y.*, 1813, p. 369.

And by the statute of Illinois was entitled to record and to be read in evidence.

Purple's Real Estate Statutes, 465.
Laws 1847, 37.

It is claimed that there should have been a certificate of the official character of the person who took the acknowledgment and of conformity to the laws of New York.

I answer, neither the laws of New York or Illinois requires any such certificate. Unless the statute requires a certificate of official character it is unnecessary.

Vance v. *Schuyler*, 1 Gilm., 163.
Secrist v. *Green*, 3 Wallace, 749.

And the Court takes jurisdiction of the laws of another state, so as to determine whether it is acknowledged in conformity to its laws or not.

In this case, however, it was agreed that the statutes of New York were to be considered as evidence.

Printed Record, 59.

V.

Record of Partition Proceeding.

1. The defendant below objected to the record of a decree in the partition proceeding, because, he alleged, it did not show jurisdiction of the persons and subject matter. No other objection was made.

Printed Record, 40.

This identical record was read in evidence in the case of

Secrist v. *Green*, 3 Wallace, 749.

And this Court then held that jurisdiction was shown by it.

A further point is now made that no proof was made as against the infant defendants.

This does not go to the jurisdiction.

Fridley v. *Murphy*, 25 Ill., 146.
Goudy v. *Hall*, 36 Ill., 318.

2. The counsel for the plaintiff in error claims that it was necessary for mutual conveyances to be made between the tenants in common, in order to invest John B. James with the entire title to the tract of land described in the declaration.

This might be true if the proceeding was in a court of equity. It was not; but was under the statutes of Illinois in force at that time. One of the main objects of such legislation was to dispense with mutual releases; and the court was authorized to invest the several parties with the title to the property allotted without reqniring conveyances.

Street v. *McConnell*, 16 Ill., 126.

The final decree rendered declares that the lands allotted shall be held in severalty in fee simple in lieu of all the land described in the proceeding.

Printed Record, 39, 40.

VI.

The Charge of the Court.

The court below stated fully the facts proven and left the questions to the jury: *first*, whether the heirs-at-law of William James were made parties to the partition proceeding in Pike County; *second*, whether there was notice to William James of the deed purporting to be made by Davenport to DeWitt.

As both of them were questions of fact they were prop

erly left to the jury. No point is now made for the plaintiff in error thereon.

This concludes the only exceptions preserved in the record.

VII.

The Question of Priority of Record.

The counsel for the plaintiff in error states that there is no evidence that the deed from Davenport to Hawley, under which the defendant in error claimed, and, as the deed from Davenport to DeWitt was recorded December 19, 1861, under which the plaintiff in error claimed, he had the better title.

I answer to this point, *first*, there was evidence that the deed from Davenport to Hawley was recorded May 17, 1819; and *second*, no exception was taken either to the evidence or charge of the court, so as to preserve any such question for review in this court.

The evidence consists of a certificate endorsed on the deeds from Davenport to Hawley and from Hawley to Munson, both being on the same paper, which reads:

"State of Illinois, Madison County,

"Recorder's Office, Edwardsville, May 17, 1819.

"I certify the within deeds, together with the certificates "of acknowledgment, are this day recorded and examined "in my office in Book V., p. 353 and 354."

Printed Record 16, 17.

The deeds, acknowledgments *and notes of record* were offered in evidence.

Ibid 12.

Objection was made to the deeds, but none to the notes of record.

Ibid 19.

As no objection was made, of course no exception was taken.

The court instructed the jury that, "The deed from Davenport to Hawley was recorded, in the proper office, before the deed from Davenport to DeWitt," and no exception was taken to that part of the charge.

The point to be determined by the jury was one of actual notice of the unrecorded deed. There was no evidence whatever on that question. It is true the copy of the deed from Davenport to DeWitt purported to be witnessed by Eliphalet Hawley, but there was no evidence tending to prove that the signature was that of the grantee in the first deed.

It is not improper to state, what must be inferred, that the point now made, that the certificate of the record of the deed from Davenport to Hawley lacked the signature of the recorder, was not observed by the court or the counsel on either side during any of the four trials below. It is now observed, and the question is raised for the first time.

Under these circumstances the plaintiff in error cannot procure a reversal upon this ground.

VIII.

The Will of William James.

For the purpose of proving title out of the plaintiff below, the defendant offered a copy of the will of William James, by the terms of which the estate was devised to three trustees.

Objection was made, because it was not properly authenticated; the court reserved the question, and allowed the document to be read subject to the objection.

Printed Record 61.

During the progress of the trial the will was treated as immaterial, and was not pressed by the defendants below. No exception was taken so as to preserve any question in the record for this court.

Printed Record 116.

The objection to the copy was well taken.

The only authentication was the certificate of the Surrogate of Albany County, New York, that the copy was a correct transcript of the will and proofs.

Printed Record 75.

This is not in compliance with the laws of the United States in regard to records or office papers in a foreign State, because there is not a certificate to the official character of the person making it; it does not appear that the Surrogate was the sole judge or clerk of his court, or that the attestation was in due form.

There is a statute in Illinois authorizing foreign wills to

be certified in a particular manner and recorded in Illinois, and copies from such record to be read in evidence.

Laws 1853, 239.

2 *Purple's Statutes* 1226.

This copy fails to show certificates according to the Illinois statute ; the document has not been recorded in that State, and the copy offered does not come from an officer of a county court in Illinois.

Had the defendant below urged the copy of the will and proof, it must have been rejected.

This identical will, however, was set aside and declared void by the courts of New York.

Hawley v. *James*, 16 *Wend.* 71.

It is true that the Court of Chancery in New York subsequently held the will according to the law of Illinois to be valid so far as it related to the trust in regard to lands in Illinois, and the naked title to be in the trustees.

Hawley v. *James*, 7 *Paige* 218.

Yet the courts of Illinois have never so decided. The will was never brought to that State or proved therein, and, if necessary, we could show that by the law of that State the title never did pass to the trustees, but, on the contrary, descended to the heirs-at-law.

Again, the finding and decree of the Pike County Circuit Court is conclusive on this question.

In conclusion, I have to say that the statement of the case by the counsel for the plaintiff in error, at the commencement of his brief, is not maintained by the record.

The questions raised are clearly in favor of the judgment rendered. The plaintiff in error shows no merits in his defence, and after four trials, all resulting against him, he ought to be content.

W. C. GOUDY,

for Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

No. 171.

DEAN—APPELLANT.

vs. } Brief for Appellee.

YONNELL'S Administrator—APPELLEE.

This case comes up from the Northern District of Georgia. The whole record consists of the Bill and exhibits—the Demurrer and the Decree sustaining the Demurrer and dismissing the Bill.

In February, 1864, Dean sold to Yonnell a tract of land in Georgia, for $24,000 of Confederate money, and, having received payment of the price, made to the purchaser a deed in fee simple with general warranty.—*Record, page* 6.

After this sale and conveyance, Dean became dissatisfied, and, repudiating the contract, refused to surrender possession of the land. Yonnell, the purchaser, died intestate before 1866; and, in January of that year, Harvey, his administrator, made a full settlement and compromise with Dean, in which Dean released all claim to the land, and took a lease of it from Harvey, administrator of Yonnell, as the true owner.—*See Agreement, record page* 7.

Not satisfied with all this, Dean attempted to withhold from Harvey the possession of the land by making a lease of it to a man named Leming, but this attempt was defeated by Leming who surrendered and attorned to Harvey; and, thereupon, Dean filed his Bill in this cause to set aside the contract of sale and the agreement of compromise and to obtain a re-conveyance and surrender of the land. The Defendant demurred to the Bill and the Court below sustained the Demurrer and dismissed the Bill.

Before considering the questions upon which the case of the plaintiff must really depend, it may be well to get rid of some that have evidently been thrown in for the mere purpose of making up a "railing accusation."

1. It is alleged that "at and for some months previous" to the sale the plaintiff "was laboring under the delusion that the Treasury notes which had been issued by the Confederate States was good and lawful money," and that "whilst laboring under such delusion" he was approached by Yonnell and induced to make the sale for Confederate money.

I presume this can hardly be taken, even on demurrer, to be a sufficient allegation of insanity, and of unfair advantage taken of one *non compos*.

2. It is stated that the "deed of conveyance does not specify any consideration in it except by use of the words "value received," the same being so cunningly and fraudulently worded by direction of said Yonnell to conceal and cover up the illegal, pretended and worthless consideration.

This is the only express charge of fraud in the whole Bill, and it would seem to be mere "*brutum fulmen*"—without point or force in any practical sense.

3. It is alleged that the consideration received in Confederate money was only worth $1200, while the land sold was worth $6000.

Mere inadequacy of price does not of itself constitute a ground for rescinding a contract. It is at the most a circumstance from which fraud or imposition or oppression may be inferred, and no such inference can be made in favor of a party who does not allege or pretend that any such fraud or imposition or oppression was in fact practised. The failure of the plaintiff to make any such charge in regard to the contract of sale, becomes more significant in view of the fact that he does attempt some such charge in regard to the contract of compromise made with the administrator.

4. The history given by the plaintiff of the compromise made with Harvey as administrator of Yonnell was evidently intended to suggest the idea of false pretence, oppression and fraud on the part of Harvey, but when it is examined it will be found that nothing is charged against him but what he had a perfect right to do in the proper discharge of his duty as administrator. It was clearly a case of controversy, and threatened litigation, ending in a full settlement and compromise, and so far from being liable to objection on that account, it is for that very reason a favorite in Courts of Equity.

5. Want of confidence in the Courts of Georgia can hardly be recognized as a valid reason for setting aside a contract. The uncertainty of litigation is no doubt very often an inducement to submit to sacrifice or even to known injustice, but the Courts can hardly relieve against contracts merely because they are made for such a reason.

6. The attempt to set up an Equity in favor of plaintiff's mother, Mrs. Eliza Dean, who is no party to the suit, wholly fails to help the plaintiff. The equity as against Yonnell is not made out, for want of any allegation of notice on his part, and, if it were clearly made out, the plaintiff can take no benefit from it, as it does not belong to him, or in any wise depend on his suit. The ground of relief mainly, if not exclusively relied upon by the plaintiff, is that the sale was "void and of no effect by reason that the consideration to be paid for the same by the agreement was to be Confederate money, issued by a power then at war with the government of the United States, and said money having been issued for the purpose of aiding and carrying on said war."

If it were necessary to our case it might well be claimed that a contract could not be avoided for the mere reason that it was made in consideration of, or payable in, Confederate money.

In the progress of the late war it came to pass that the people within the limits of the Confederate States were wholly deprived of all currency except Confederate money, and were absolutely dependent upon that medium of exchange for the transaction of all the essential business of life. Under such circumstances, to pass or to receive Confederate money had nothing whatever to do with the political opinions of men, and was not intended or regarded as in any sense giving aid to either of the contending parties.

To declare all contracts or engagements in which men recognized the actual condition of affairs, and sought to make the best of it, as void, would be to force the uncertainties and hardships of war into the every day and necessary transactions of classes who in all history have been regarded as entitled to exemption from the ups and downs of rebellion or revolution. It would seem to be enough to denounce and annul such contracts as are found to have in them any element of purpose to aid rebellion, or to resist the Government, and to leave all others to be executed or enforced upon their intrinsic business merits.

Our case, however, does not depend upon the legality or illegality of the money paid and received upon the contract under consideration, for the simple and sufficient reason that the contract was fully executed at the time it was made, and that when it was afterward brought in question between the parties, and its validity resisted and disputed, the controversy was settled and compromised, and the sale and conveyance originally made were fully confirmed and established.

It will hardly be denied that so far as dealing with or in Confederate money was at any time illegal, it was so alike in him who passed and him who received it; clearly a transaction between parties *in pari delicto*. In all such transactions, the maxim applies "*melior est conditio defendentis*," and Courts of Equity have always refused to enforce such contracts when executory, or to disturb them when already executed. There is here no circumstance upon which a Court of Equity could found any discrimination between these parties. The pretence of delusion on the part of Dean is to oshallow, and the insinuations of fraud are too vague and remote to prevent the conclusion that the contract in this case was one of the many thousand occurring in the South during the war, in which parties dealt with each other without purpose to commit any unlawful or unfair act, and upon considerations which, however they may now appear, were at the time equally well understood by the parties and equally satisfactory to both. Where such contracts are as yet executory, a most difficult and delicate duty is devolved upon the Courts called upon to deal with them under circumstances so greatly altered, but where the parties at the time, upon considerations then satisfactory to both, carried their contract into full and final execution, it would seem to be the plain duty of the Courts to let the tree lie where it has fallen.

These considerations are, of course, greatly strengthened when it appears that after the war was over the parties, upon new discussion, re-affirmed the original agreement, and thus brought into the transaction that most favored ground of support in Equity—the settlement of disputes and the ending of strife.

It would seem to be a fatal objection to a Bill brought to set aside a conveyance of land to a purchaser who has died intestate, that the heirs at law are not made parties.

JOHN B. BALDWIN,
of Counsel for Appellee.

STAUNTON, VA., October, 1869.

rd's Imp.d method of Bending Timber.

Patented Dec. 18th 1849.

Reissue.

Fig: 2.

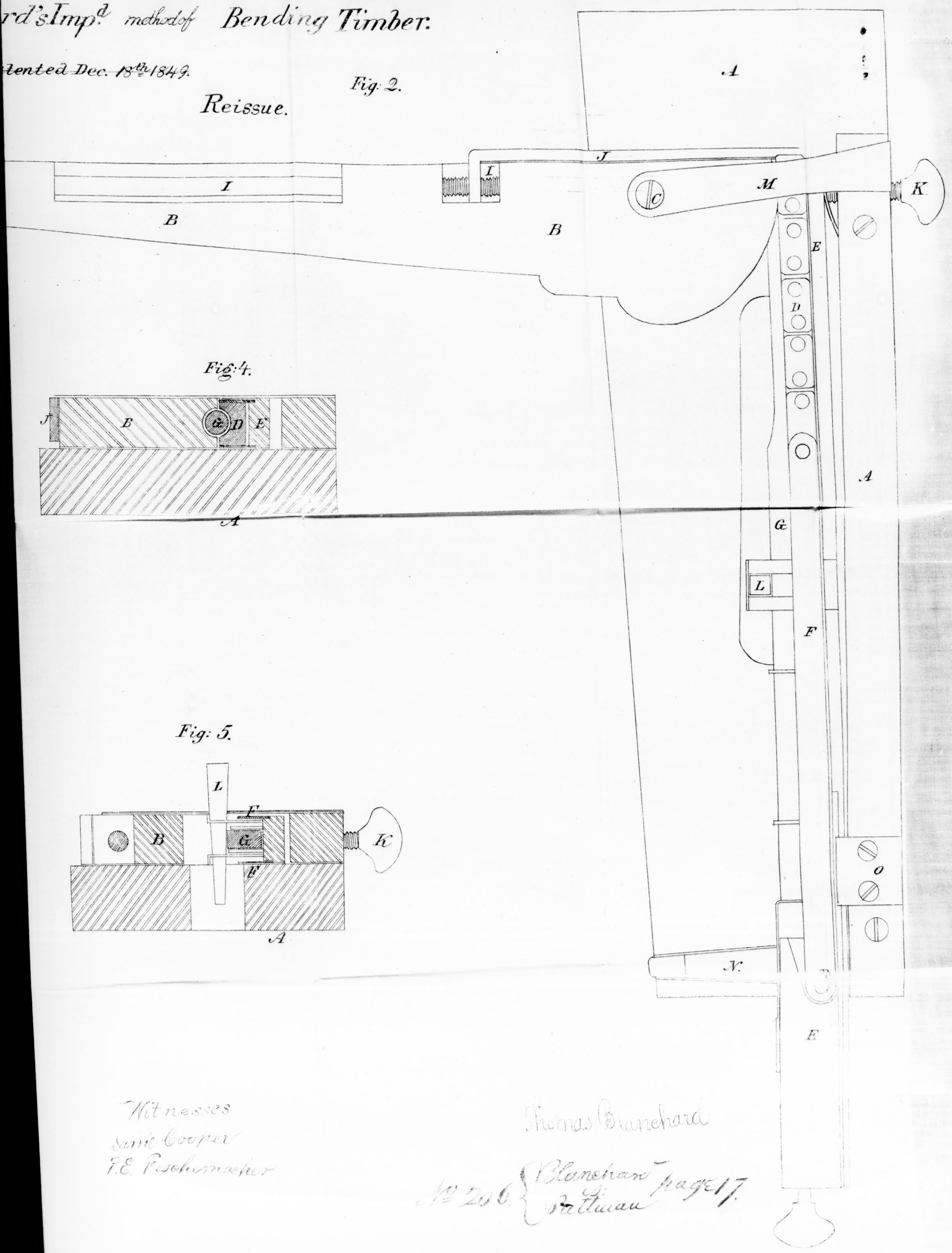


Fig: 4.

Fig: 5.

Witnesses
Sam.l Cooper
P.E. Foehrmacher

Thomas Blanchard

No 206. { Blanchard Planing Machine } page 17.

No. 853.

Thomas Blancha

Fig. 1.

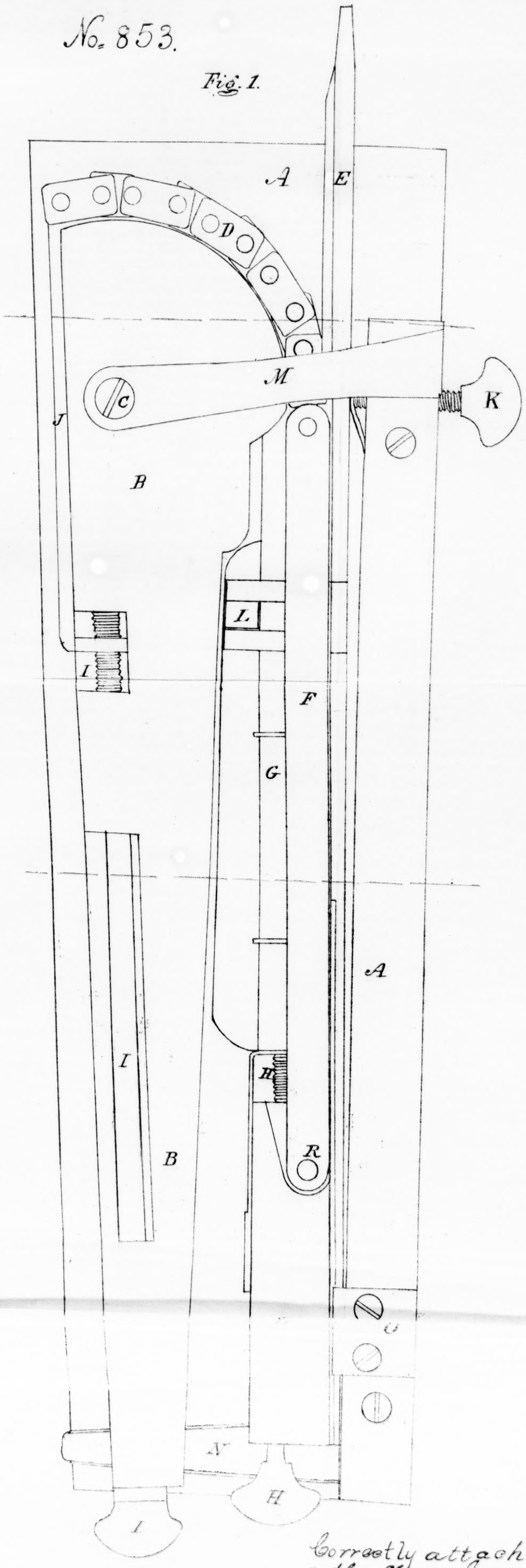
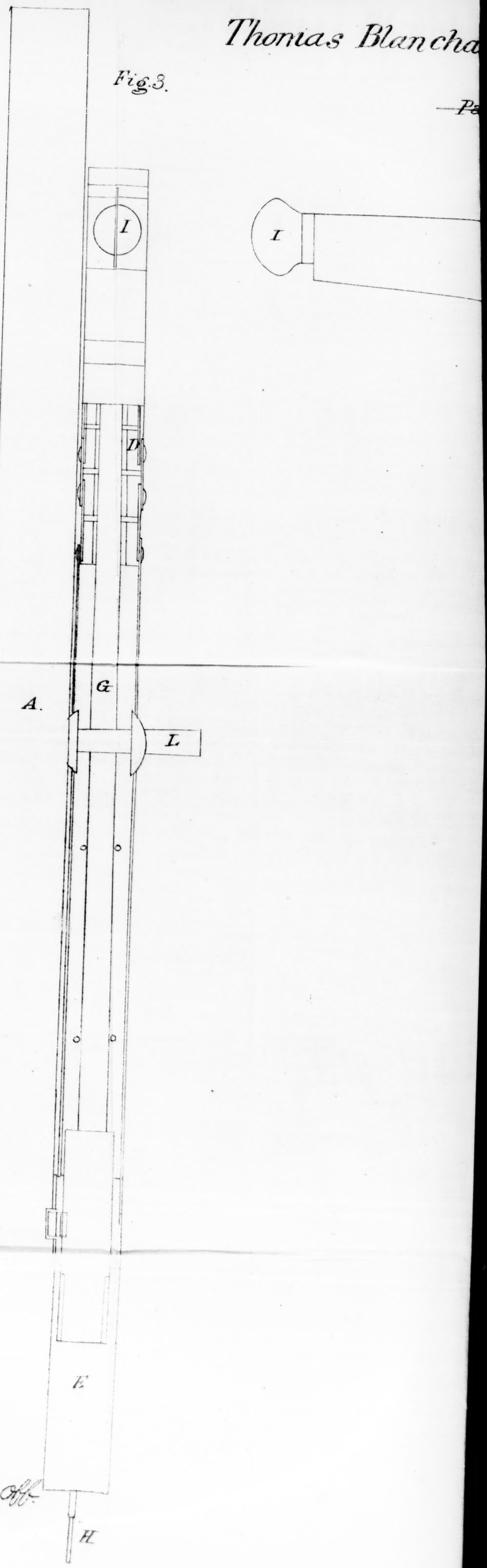


Fig. 3.



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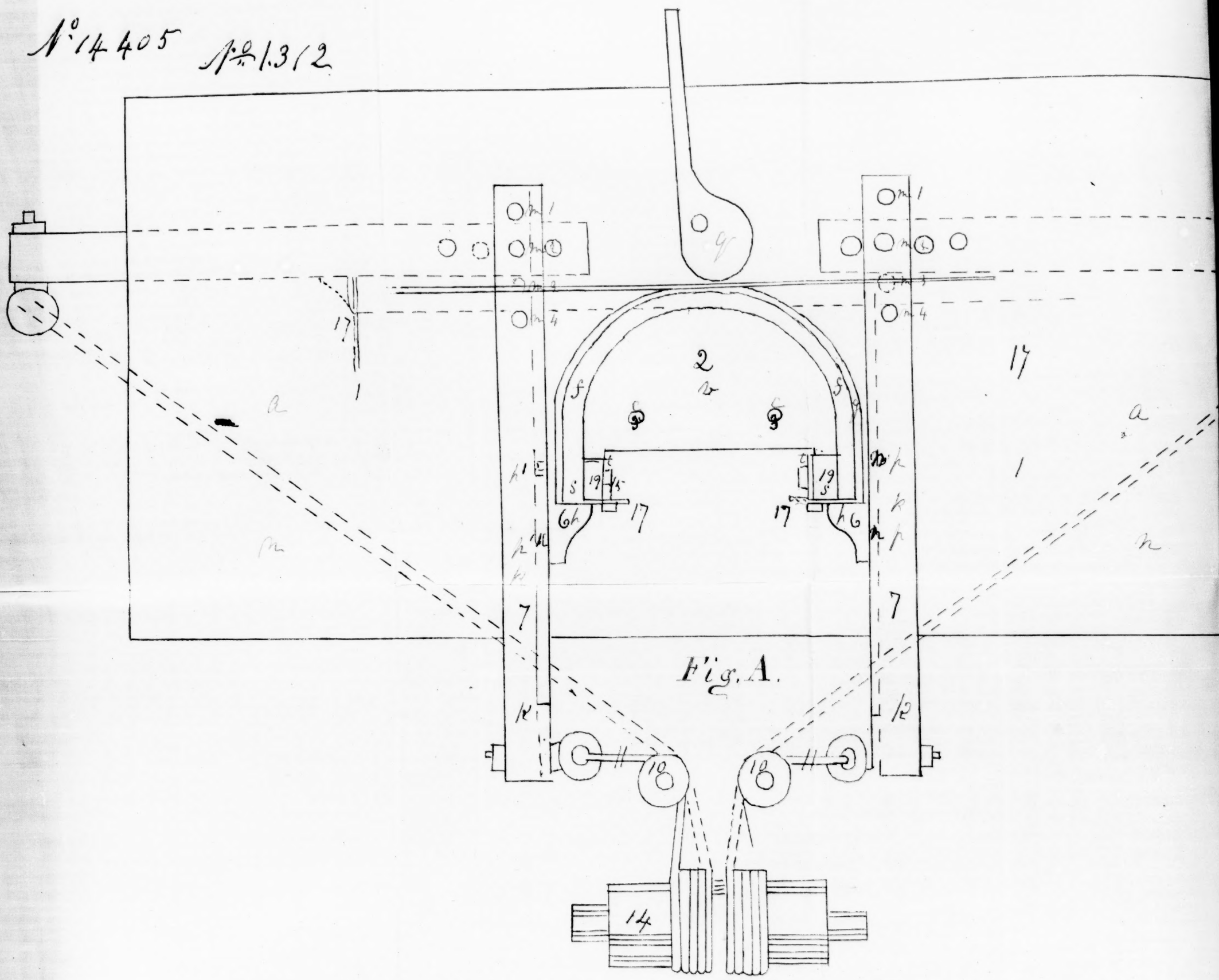
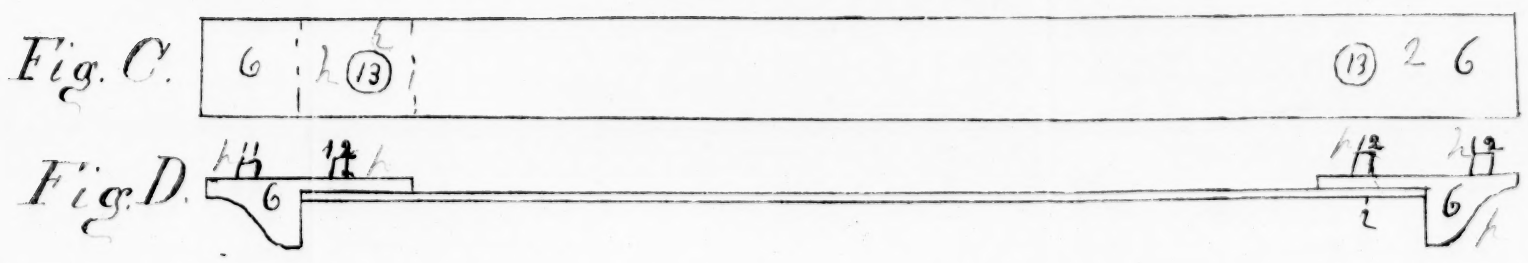
Arthur L. McIntire Exf P. Off.

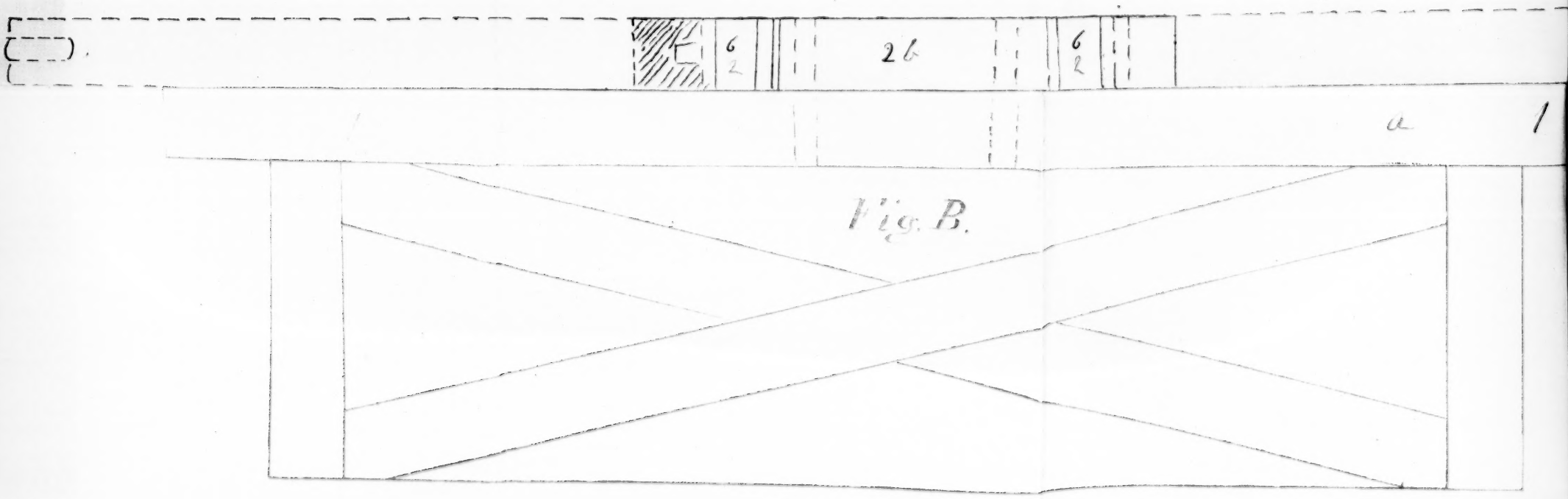
125 — 14

Reissue.

N° 14405 N° 1312







Rec'd & filed March 10/62
8 MK

John C. Morris
Improved Method of
Bending Wood

John C. Morris

Witness
J F. Baldwin
John Cressman

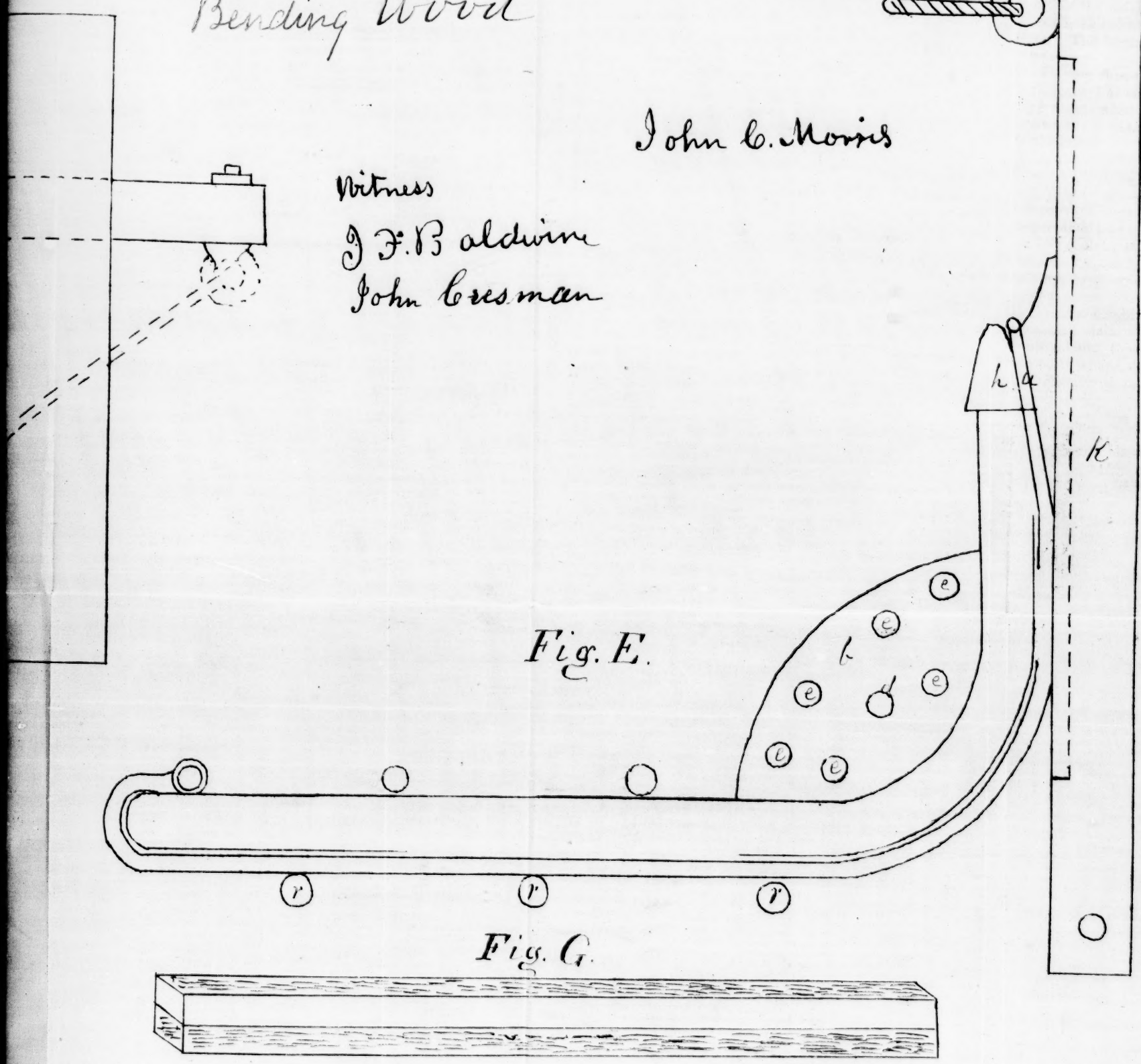
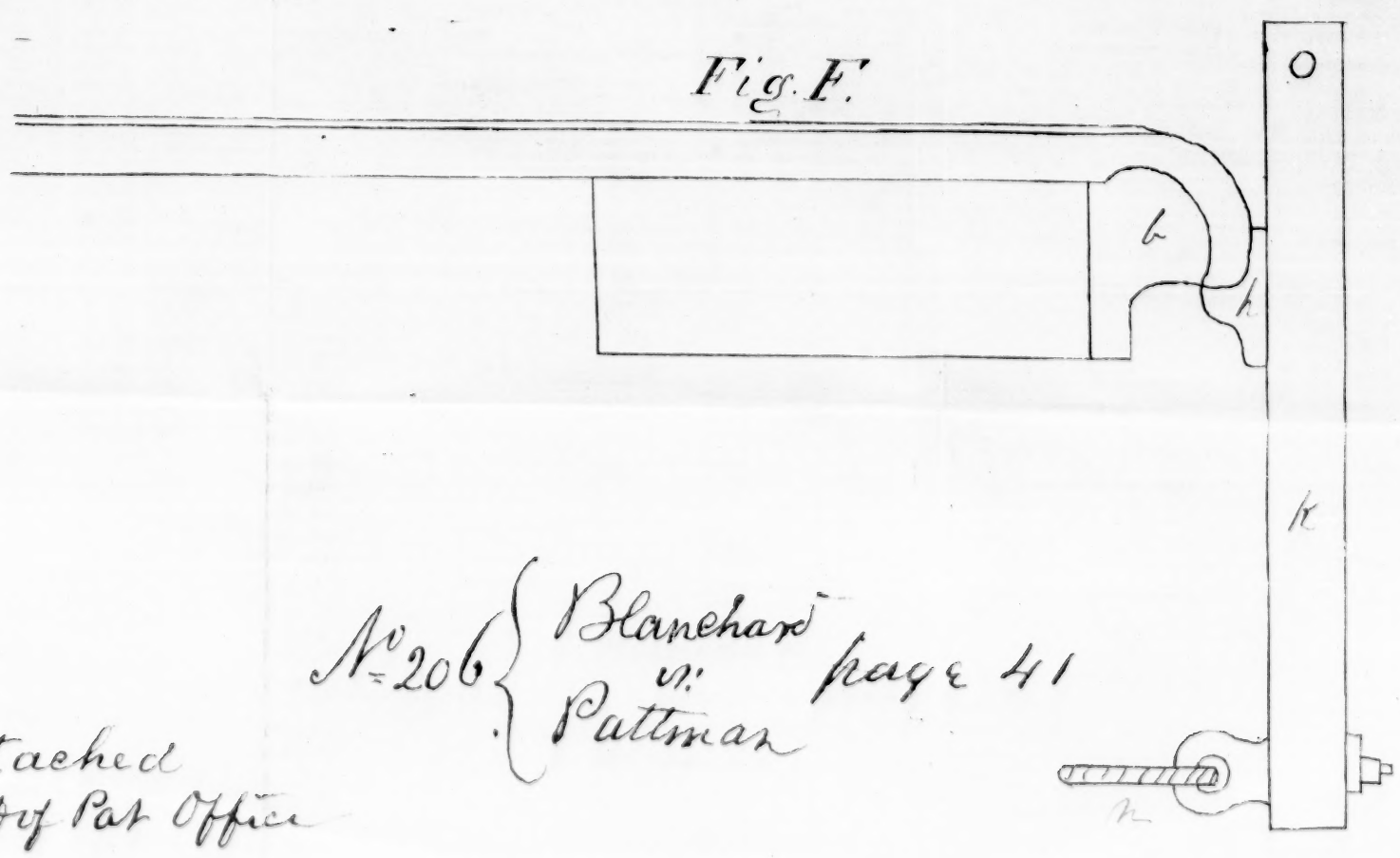


Fig. E.

Fig. G.

Fig. F.



No 206 { Blanchard vs. Pattman page 41

Correctly attached
L Bosworth Asst Dy Pat Office

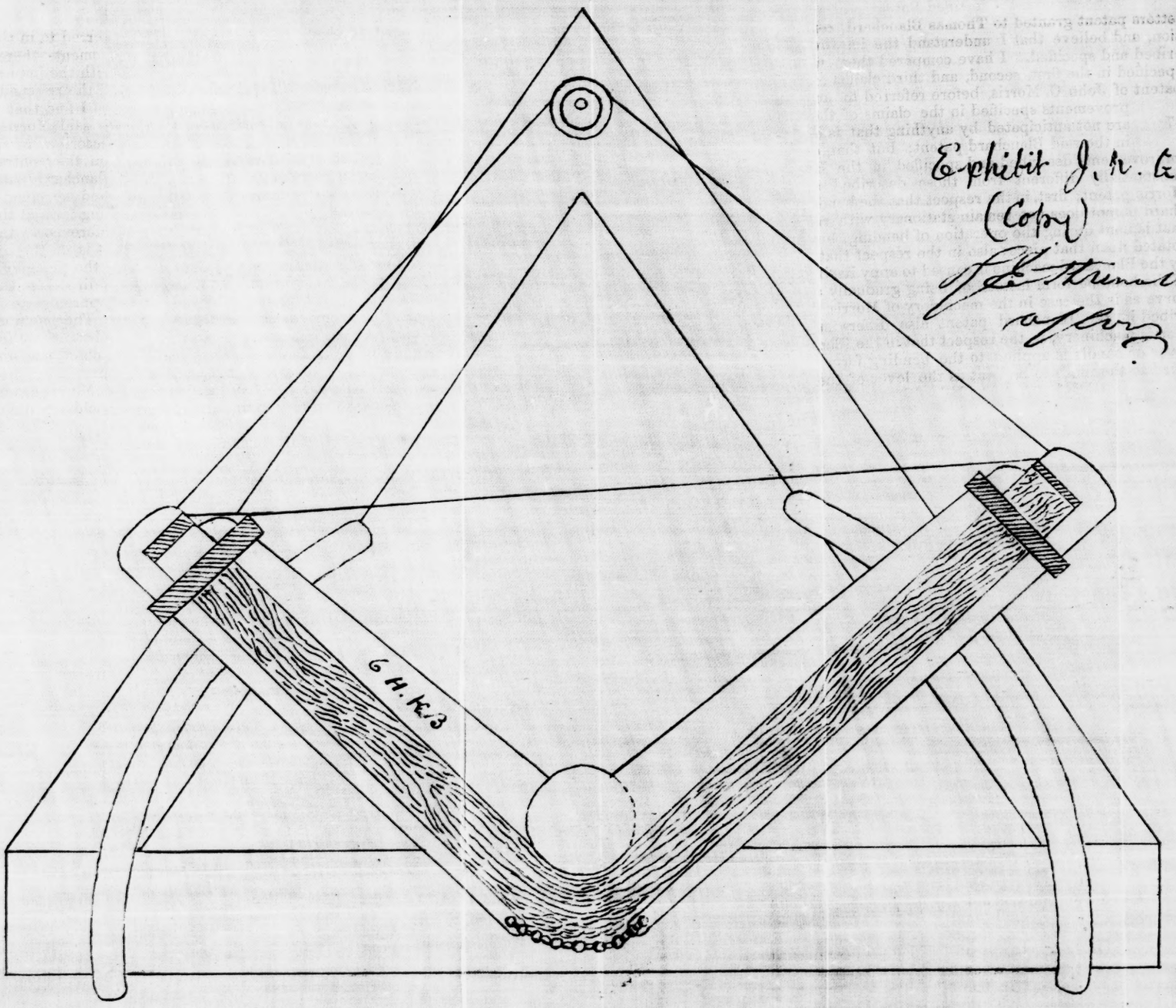


Exhibit J. R. G. 1
(Copy)
J. E. Brennan
Clerk

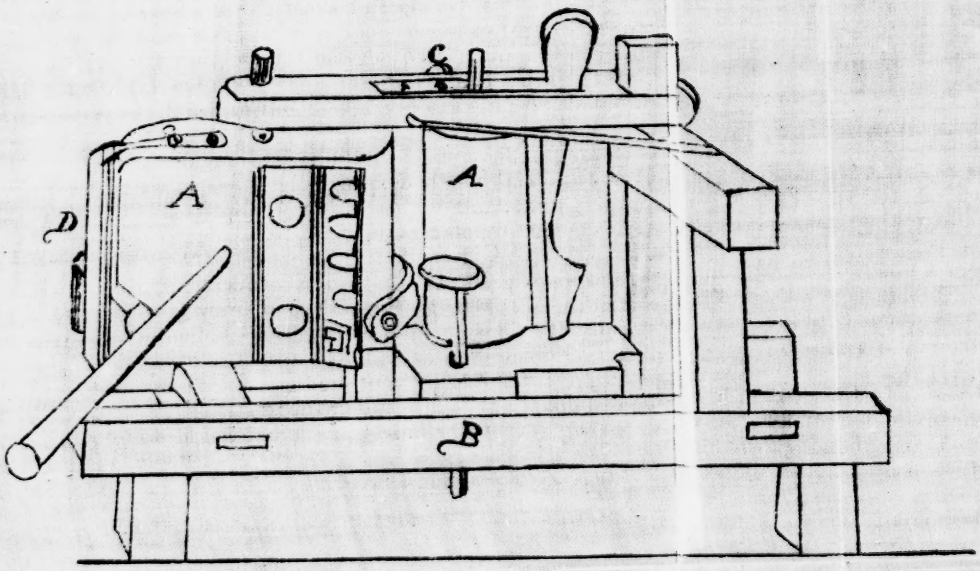
No 206 { P. V. Blanchard vs Puttiman } page 48

E. Reynolds

Bending or setting Felloes for the Wheels of Carriages & Wagons

Pat-d 17 July 1835

A. Cylinders
B. Bench
C. Regulating Screw & Block
D Clevis

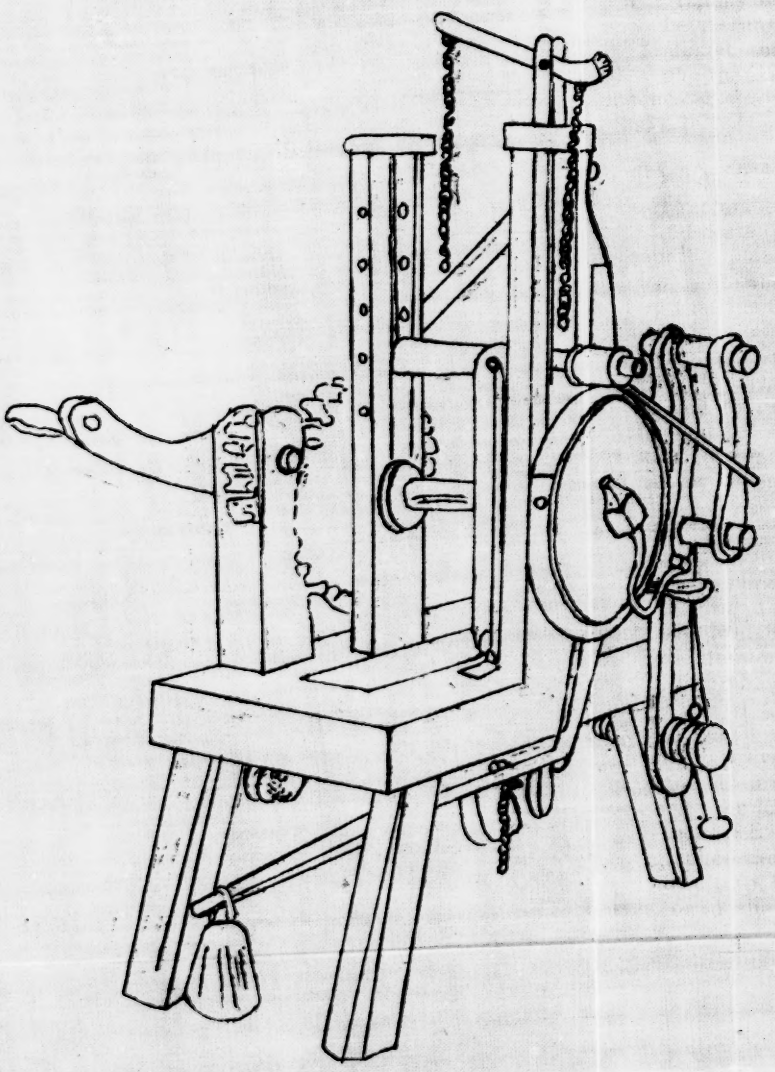


№ 206 { Blanchard vs. Puttman page 59

Jona Mulford's

Bending Mast & Truss Hoop

Patd 26 Jany.
1835



№ 206 { Blanchard vs Puttman } page 6r

H. H. May.

Machine for bending Plough Handles.

Rejected May 30~1845

No 206 { Blanchard & Putnam } page 64

Fig. 1.

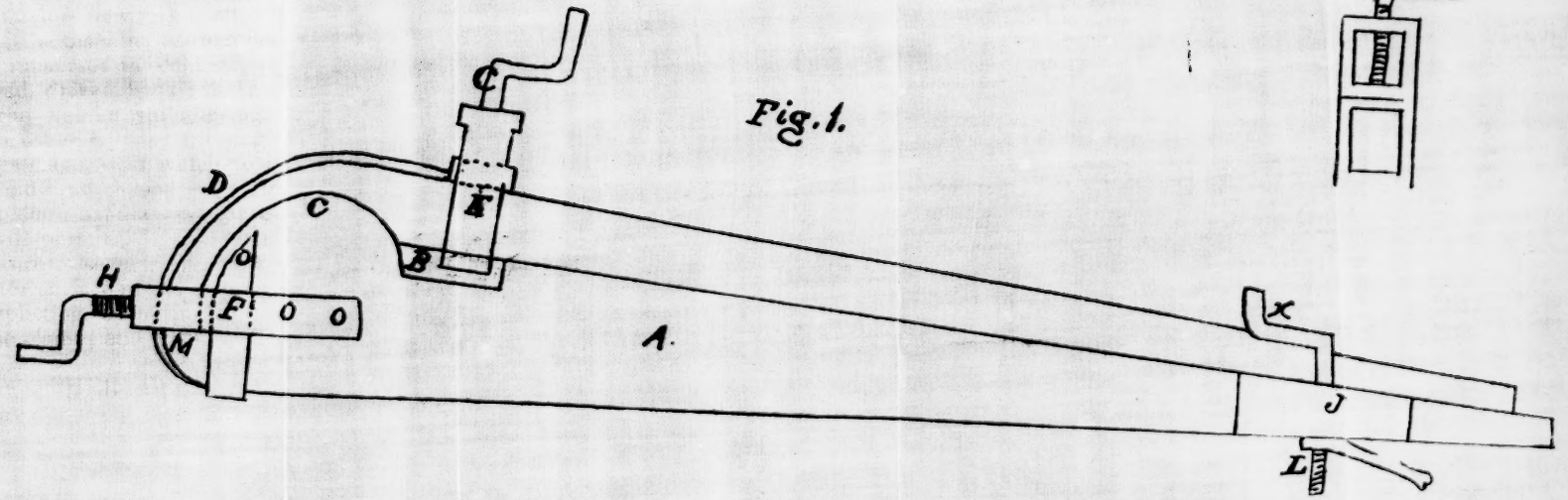
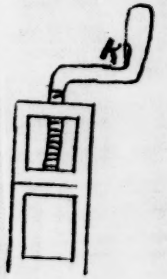


Fig. 2.



No 6934

Abel Gardner's
Hair Bending Block

Patd 11. Dec. 1849.

Fig: 1

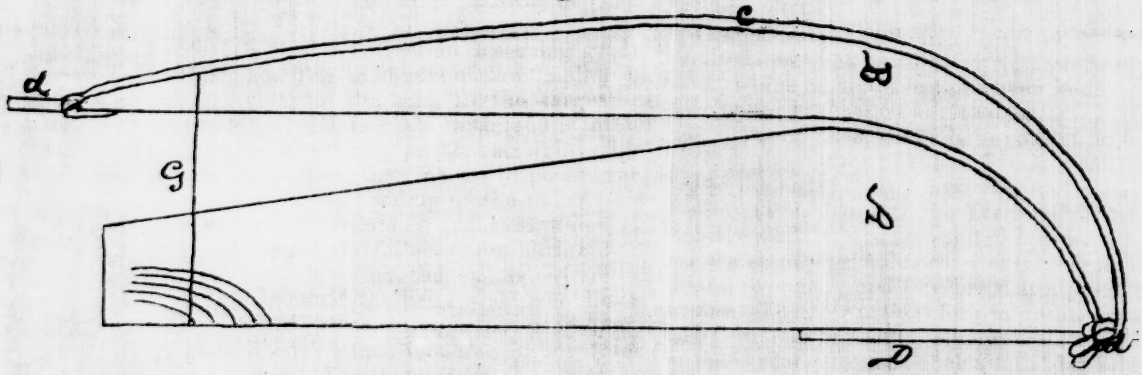


Fig: 2

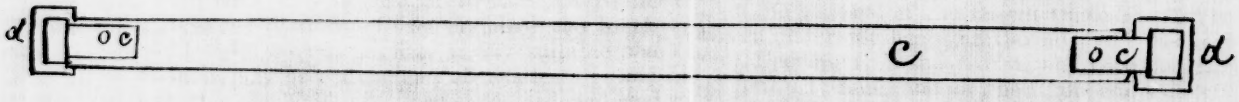
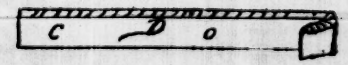


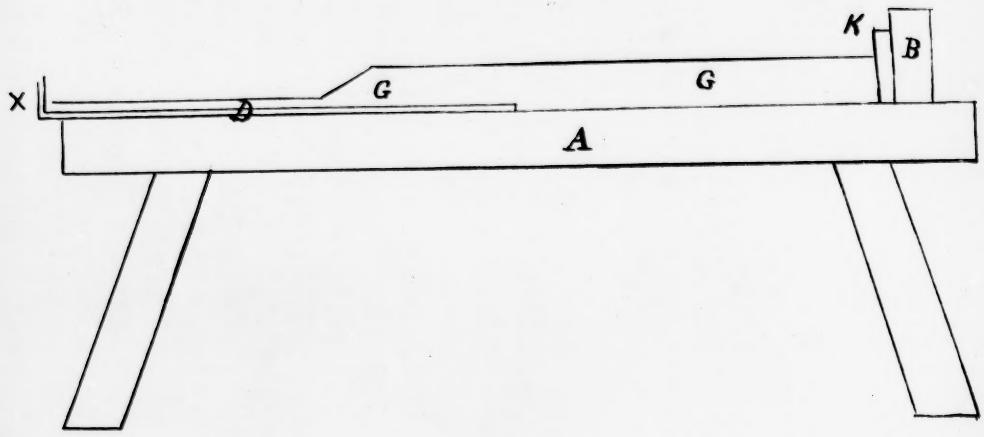
Fig: 4

Fig: 3



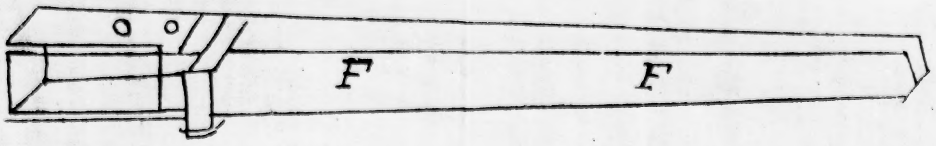
No 206 { Beaulieu vs Pattison } page 66

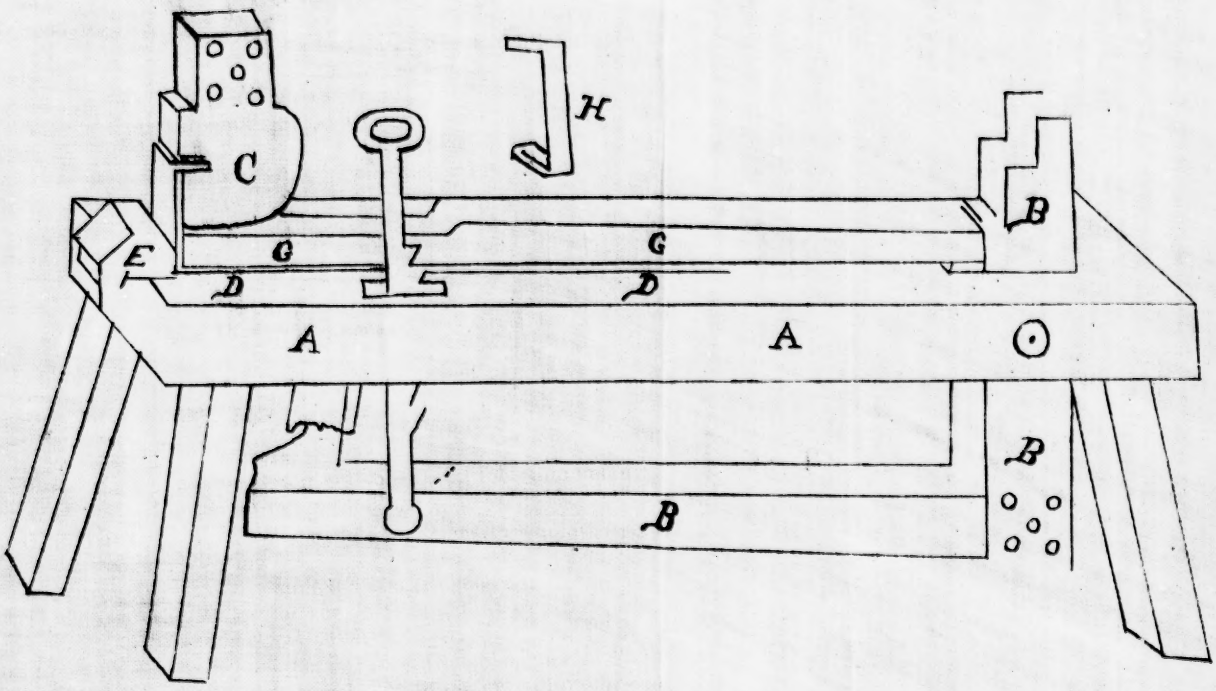
L A No. 2.

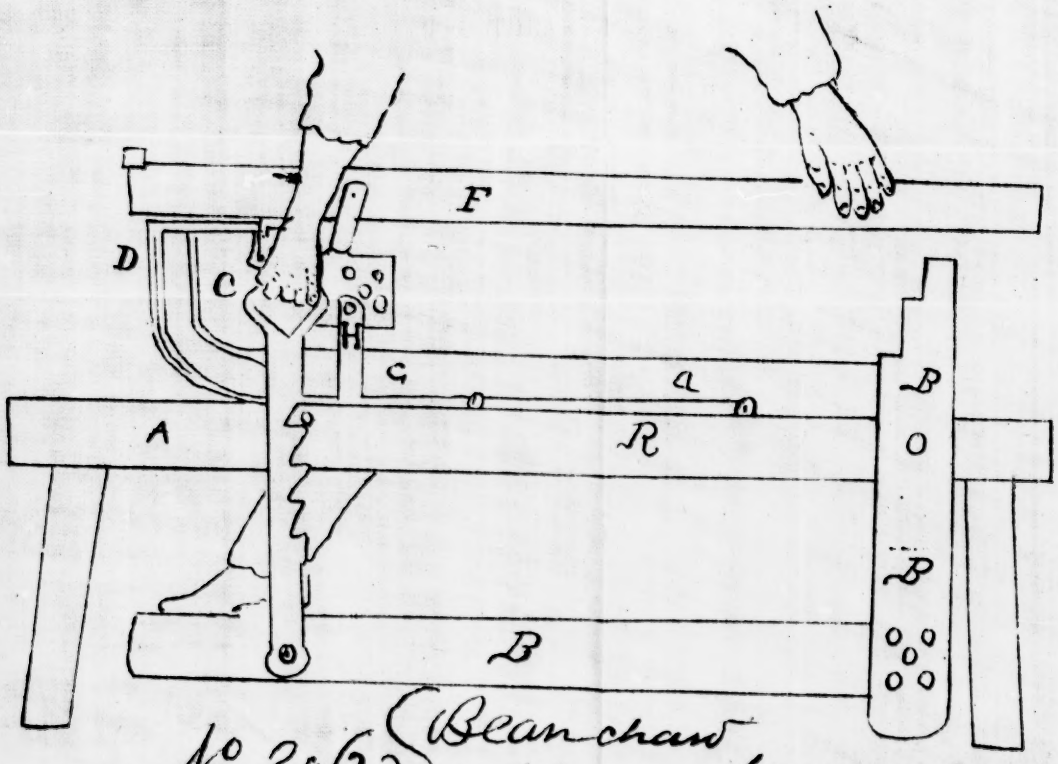


No. 206 Blanchard et Rutman page 83

"L.A."







No 206 { Beanchamp Pittman page 83

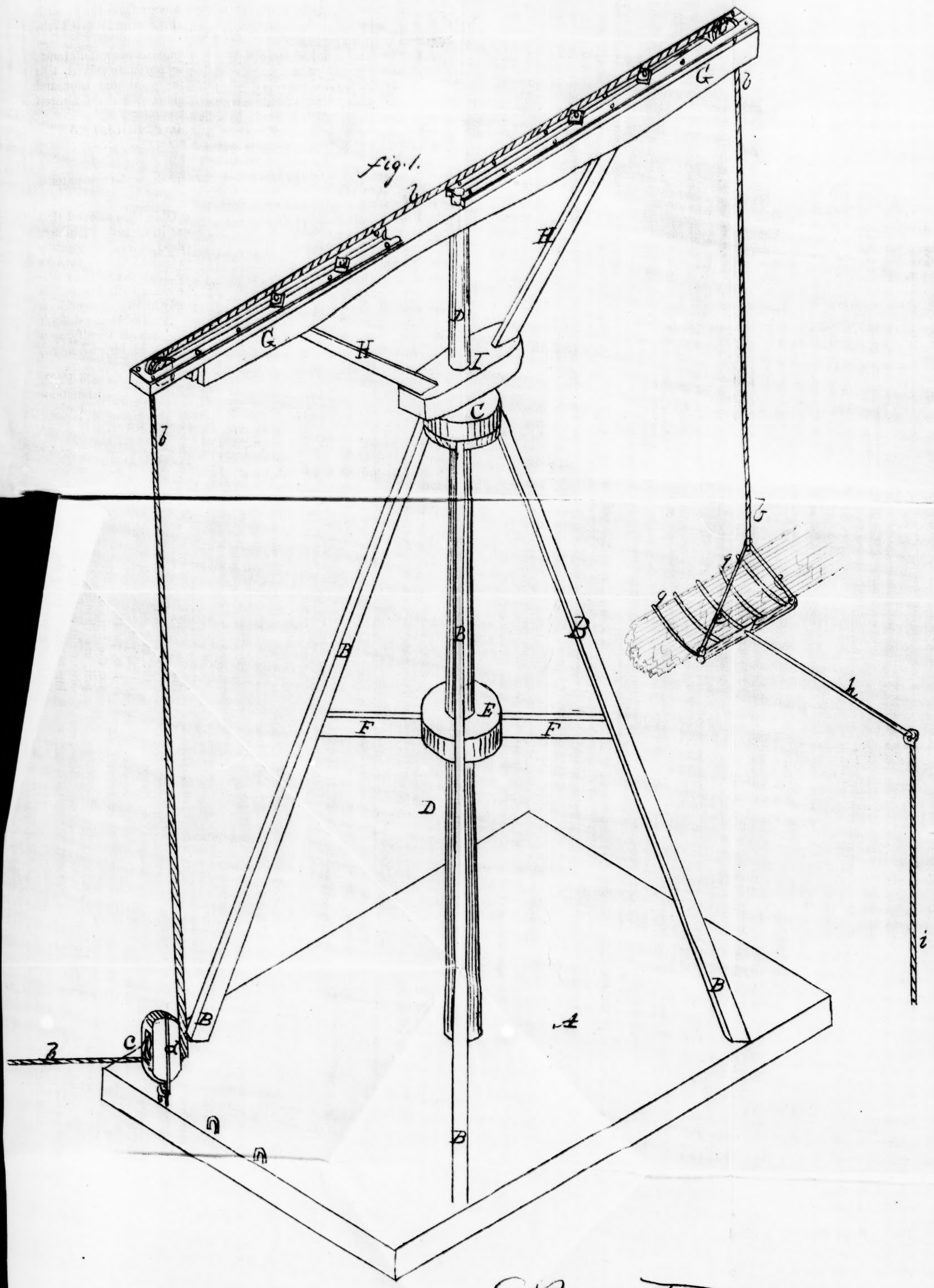
No. 1.869.

Reissued Feby. 14. 1865.

F. F. Fowler's.

Improvement in Elevators for Hay &c.

Fig. 1.



No 209 Bennett &c vs. Fowler page 193.

No. 27,899.

F. F. Fowler's

Hay Elevator.

Patented April 17, 1860.

Fig: 1.

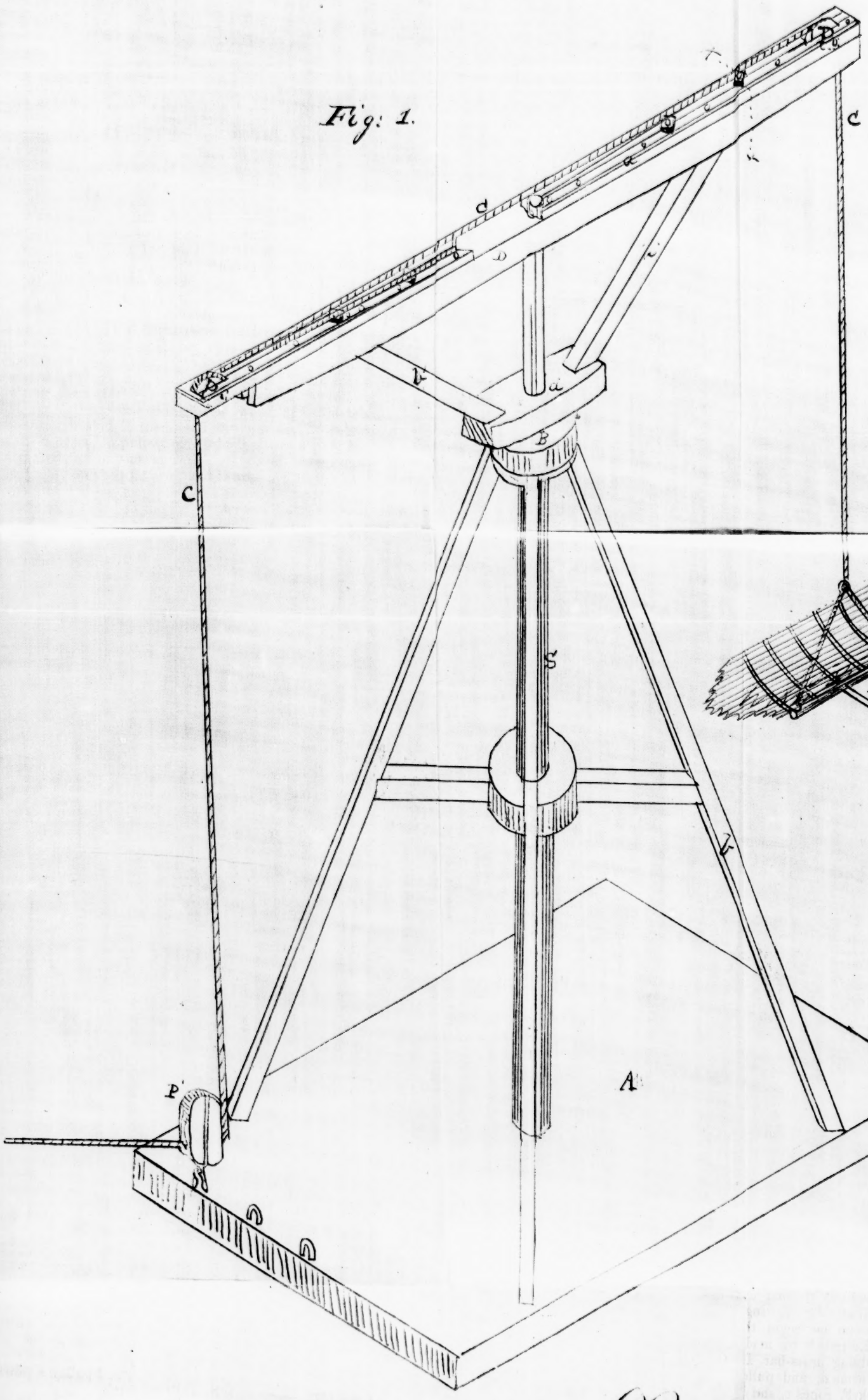


Fig: 2.

No. 209 { Bennett & al vs. Fowler } Judge Lee

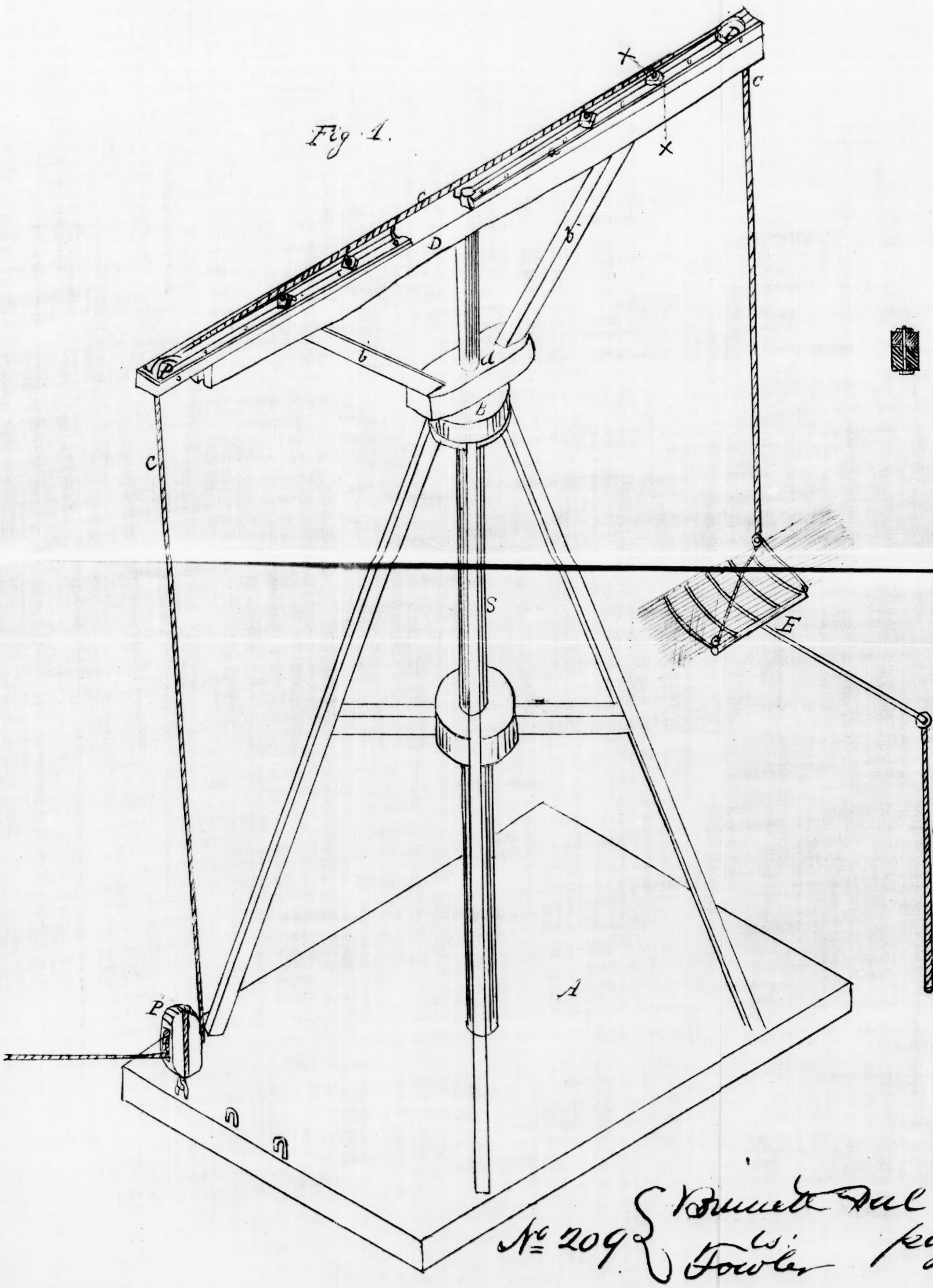
F. F. Fowler's

Hay Elevator

No. 27,899.

Patented April 17. 1860.

Fig. 1.



No. 209 } Vol. 1 Pat. Off. Wm. Fowler page 208

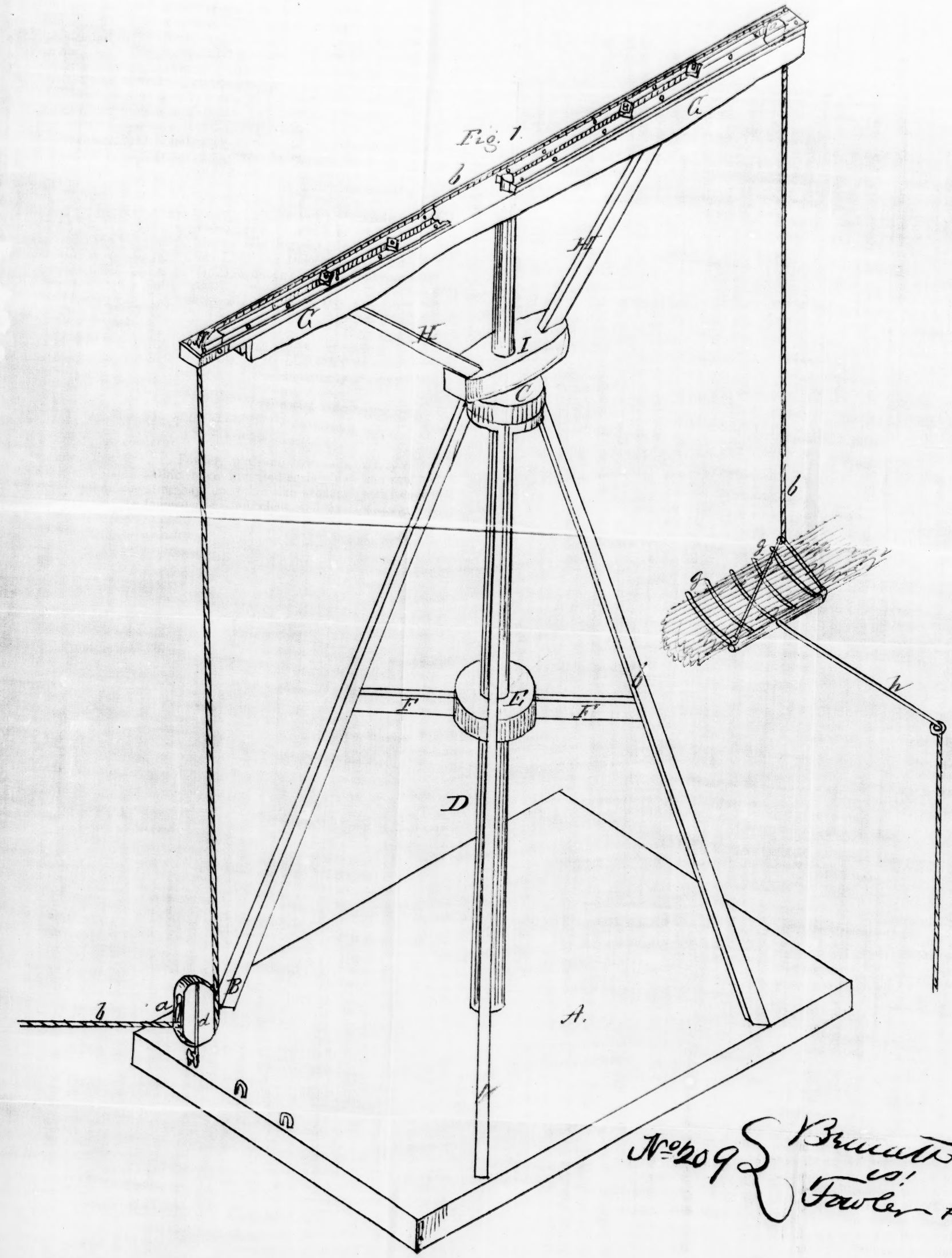
1870.

F. F. Fowler's

Improvement in Elevators for Hay &c.

Reissued Feb 14. 1865.

Fig. 1.



No 209 Brunswick
vs
Fowler et page 219.

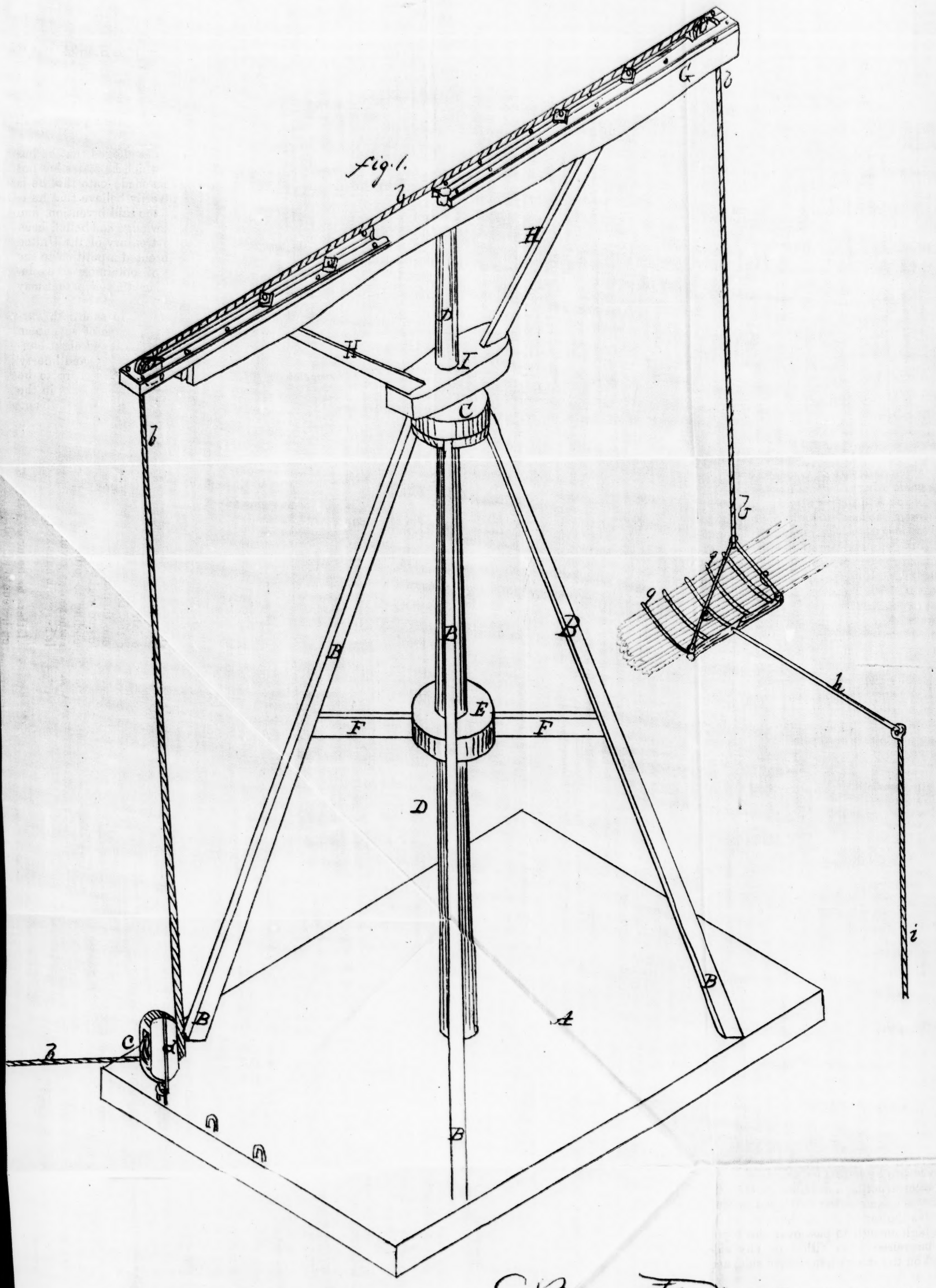
No. 1.341.

Reissued Sept. 9. 1862.

F. F. Fowler's

Improvement in Elevators for Hay &c.

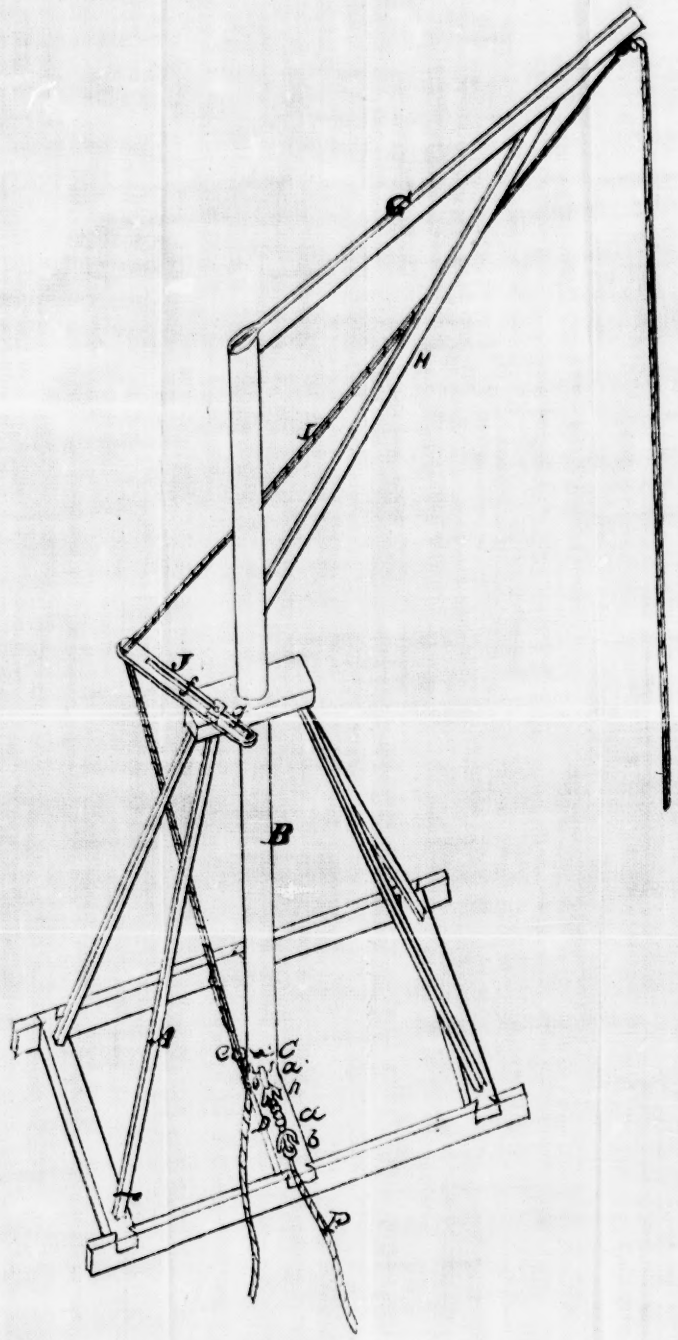
fig. 1.



No. 209 Bennett et al vs. Fowler page 231.

No. 45,445

Seth Turners. Imp.t Derrick for Elevating Hay &c.



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per Munn & Co
Attorneys

Correctly Attached
Edward Bell
Examiner U.S. Patent Office

No. 209 { Burnett et al vs. Fowler } Page 237